

PROFESSIONAL SPORTS TEAM COMMUNITY PROTECTION ACT

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2505

TO PROVIDE A RIGHT OF FIRST REFUSAL FOR METROPOLITAN AREAS
BEFORE A PROFESSIONAL SPORTS TEAM IS RELOCATED, AND FOR
OTHER PURPOSES

APRIL 27 AND MAY 12, 1984

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PROFESSIONAL SPORTS TEAM COMMUNITY PROTECTION ACT

FRIDAY, APRIL 27, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SR-253, Russell Senate Office Building, Hon. Slade Gorton presiding.

Staff members assigned to these hearings: Frank Cantrel and James Gilmore, professional staff members; and David St. John, minority professional staff member.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. The purpose of this hearing is to consider legislation dealing with an upsetting and increasingly common occurrence: the relocation of professional sports teams from cities which have significant monetary and emotional investment in those teams and in which those franchises have been both artistically and financially successful.

As the findings in S. 2505 state, the public, typically through a city or county authority, invests substantial sums through the authorization of capital construction bonds to finance the construction and renovation of the majority of the stadia in which the Nation's professional sports teams play.

It is difficult to think of more than a handful of teams, if that, which do not receive some sort of substantial public subsidy, either through lease agreements which are designed to recoup only operating expenses, through tax breaks or other similar combinations.

Because these professional sports teams operate at a national level, it is difficult for any particular city adequately to protect its interest without the risk of losing the team to some other, less cautious city.

It is appropriate, therefore, that the Congress examine what legislation may be necessary to protect the significant public investments which are an integral part of the success of the leagues which are the subject of S. 2505.

There will be three sports teams relocations or proposed relocations on which most of today's testimony will center: the move of the Baltimore Colts to Indianapolis, the move of the Oakland Raiders to Los Angeles, and the growing concern of the fans of the Minnesota Twins, particularly Senator Boschwitz, about a possible move by that team.

These are the most examples of what I consider to be an inexcusable callousness by some team owners toward the cities and fans upon whom their success ultimately depends. The list of deserted cities, however, goes on and on. It includes Seattle, WA. During my tenure as attorney general of Washington State my office sued the American League following the brief tenure of the Pilots baseball team in Seattle. After 5 long years the suit was finally settled with the expansion of the league to Seattle and Toronto.

I do not want to see that happen again to Seattle or to any other city. Senator Boschwitz does not want to see that happen to Minneapolis. Senators Mathias and Sarbanes and Congresswoman Mikulski do not want to see it happen to Baltimore, nor did Congressman Stark wish to see it happen in Oakland.

That is why we are here today. We are going to do our best to find a solution to this conflict. Finding a solution, of course, will not be easy. There are many conflicting interests involved. The leagues would like a fairly broad exemption from the antitrust laws for rules relating to relocation, but the players and many members of Congress are opposed to such an exemption.

Moreover, such an exemption does nothing to protect the interest of the cities in cases in which the league approves a relocation. We must also find some way to protect smaller cities from being raided by larger cities which can offer the owners substantial revenues from the emerging areas of pay and cable television and the like.

Finally, and this is an issue of concern to many of my colleagues, in seeking to protect the substantial and legitimate interests of cities which already have major league sports teams, we must not forget that there are many cities which hunger for such teams. How do we answer their concerns?

These are just a few of the competing interests involved in this issue. I hope that this hearing will allow us to focus on them and to identify the most equitable manner in which to balance them.

Senator Heflin.

OPENING STATEMENT BY SENATOR HEFLIN

Senator HEFLIN. Mr. Chairman, I congratulate you on calling this hearing because I think it will focus attention on a very important issue. I am the only member of the Committee on Commerce that also serves on the Judiciary Committee. The Judiciary Committee has previously held hearings on the issue of antitrust relationships with respect to the National Football League. There has been some interesting testimony pertaining to these matters.

Baseball happens to have an unusual position relative to antitrust. A situation exists where the league can make decisions, and those decisions are binding. However, no other sport falls in the same category that baseball does.

I have always believed that there are certain decisions that have to be made at the league level; that is, for the benefit of the sport and the benefit of the league. Therefore, there should be exemptions from the antitrust laws pertaining to sports and league activity and league decisions.

These exemptions should not be a complete blanket antitrust immunity, but, on the other hand, there are some important decisions that should be made at the league level.

This bill raises some interesting issues. It raises some issues that extend beyond the sports field. An analogy which I hope these witnesses will discuss is a factual situation involving an industry. An industry might be faced with a situation in which a plant was obsolete in a community or, on the other hand, was losing money, and the plant decided that it would build a new plant in a different location.

Should that plant, or that industry, be restrained from making a decision which is in the best interest of its shareholders and its employees? There are implications that go beyond the sports field and involve the free enterprise system that I think should be addressed. There may be clear distinctions. I am not saying that this is an analogy, but I would like to have some testimony which discusses the differences that are involved in this situation that make it distinct from other business transaction—other than just trying to take care of a city or take care of a great team. There is no question that the Baltimore Colts over the years have been a great team. We in this area have visited the Baltimore Colts in the past and have enjoyed their football games.

I think this is something that should be explored and such as examination should consider the effect and consequences that this legislation might have on other elements of our economy.

Senator GORTON. Senator Lautenberg.

OPENING STATEMENT BY SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you, Mr. Chairman.

I am pleased to join the committee in exploring the issues raised by the location and relocation of sports franchises. It is a matter of great concern to me and the economic development of my State, New Jersey, and the pride of its citizens.

The focus of our hearing, S. 2505, sponsored by Senator Gorton, my colleagues from Maryland and others, raises some serious questions. My most immediate concern is that this bill as drafted would threaten the planned move of the New York Jets to the Meadowlands in New Jersey.

The owner of the Jets last year sought a top quality facility for the team and for the fans. The lease was up at Shea Stadium. He solicited bids and selected the Meadowlands. The Jets signed their lease on March 15, 1984, and their first game in the Meadowlands will be played on September 6. New Jersey will proudly welcome them.

My concern is that this bill threatens to scotch that move. The bill is retroactive to January 1, 1984. There is no question that the bill imposes a lengthy notice period, one that puts the 1984 season at a new location out of the question.

The bill applies to a move out of a team's league-granted territory, which the Jets move is not; but it also applies to a move out of a metropolitan area, which the Jets move may well be. While the bill does not define "metropolitan area," the government tells

us that the Meadowlands is in the Bergen-Passaic SMSA, and Flushing, NY, is in another.

Mr. Chairman, this bill places a cloud over the Jets move, and it is a move that the fans support. It is a move that is a result of the marketplace at work. And I simply cannot support legislation that would interfere with the move of the Jets team.

But aside from the Jets, the bill raises more general issues: how involved should the government be in the locational decisions of a sports franchise, which is a business, a different kind of business, but a business all the same?

The bill sets up a clear preference for the status quo, for keeping teams where they are. That seems to assume that teams were allocated according to some fair plan. But for years the people in New Jersey had to identify with New York or Philadelphia for baseball, hockey, football, and soccer. Was that fair to a State of more than 7 million people, to one of the largest market areas in the country? By favoring the status quo, the bill would seem to deny changing markets and changing population. But markets do rise and decline, populations move, teams come and teams go.

Now, there is definitely a purpose to be served by attracting sports teams. New Jersey's facility is the source of great pride to the State. It has created more than 3,000 jobs directly and served as a catalyst for more than 37,000 additional jobs. But New Jersey did not rob any market of its team. As a matter of fact, it provided a very high quality facility that attracted them and attracted fans from the city of New York who felt that this facility was something that they and their families would like to visit.

Ideally, New Jersey should keep its teams not because it ties them down, but because the facility serves the team and the fans are loyal. Besides, if we tie down all teams, how is New Jersey ever going to get the baseball team it never had?

Thank you very much, Mr. Chairman.

Senator GORTON. Senator Kasten.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Thank you, Mr. Chairman.

First, I would like to thank you and to compliment you for the terrific job and the leadership you are showing on this legislation. I have cosponsored S. 2505 out of concern over the impact that the sudden relocation of a sports franchise could have on a community.

We have just seen the latest example in Baltimore where the football team simply stole out of town one night not long after Oakland also lost its football team. Wisconsin has not been spared with the loss of our Milwaukee Braves back in the 1960's.

I have got no problem with businessmen conducting their affairs in a way that provides them a fair return on their investments, and I have long supported efforts to limit Government interference in the private sector. But in this day and age, a professional sports team is not simply a private enterprise. Teams are supported directly and indirectly by all levels of government. Congress, for instance, has provided antitrust exemption to baseball, and Federal agencies have been involved in more than one professional sports dispute. State and local governments build public stadiums and fa-

cilities to accommodate teams and even provide tax breaks in order to assist franchises.

But such investments of public resources are done with an eye toward recouping these expenditures over the course of several years through an expanded tax base and collateral business generated by the presence of a professional team. If the public relies on a team's long-term stay to justify spending public resources and the team suddenly packs up and leaves after a short term, who is left holding the mortgage on an empty stadium, and who pays off the 20-year municipal bonds that finance them? Who makes up for the business that hotels, concessionaires and others lose? Who makes up for the lost tax revenue to the city, to the county, and to the State?

And all of this does not even take into account the emotional aspects of the team's departure. Modern sports teams are closely identified with their communities, and our citizens take great pride in the prowess of their respective home teams. When such close ties are suddenly torn by what could be seen as a shortsighted search for questionable financial gains, it is no wonder that our constituents feel that something should be done to ensure that team transfers are made on a more responsible basis.

The legislation before us recognizes the unique aspect of professional sports franchises in our community and takes what I consider to be a responsible approach to a very real dilemma. I welcome this opportunity to see the issue addressed further, and I look forward to the testimony that we are about to receive this morning.

Thank you, Mr. Chairman.

Senator GORTON. Thank you, Senator Kasten.

Senator Long.

Senator LONG. I will reserve my statement.

Thank you, Mr. Chairman.

Senator GORTON. Thank you very much.

We will now proceed with the beginning of the hearing. There are three distinguished members of the Senate here, each of whom is a cosponsor of this bill, whose views we would like particularly to hear, because each of them represents a State in which there is a large and distinguished city which is immediately affected by the bill.

Senator Boschwitz has shown a great deal of interest in the subject for a period of time extending far longer than the life of this bill, and has himself drafted another, somewhat narrower piece of legislation on the subject because of his concern for the State of Minnesota, and particularly for the Twin Cities. He is also a cosponsor of S. 2505, which will be inserted in the record.

[The bill follows:]

S. 2505

IN THE SENATE OF THE UNITED STATES

Mr. GORTON (for himself, Mr. BOSCHWITZ, Mr. MATHIAS, and Mr. KASTEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Professional Sports Team
4 Community Protection Act”.

FINDINGS AND POLICY

6 SEC. 2. (a) The Congress finds that—

(1) professional sports teams achieve a strong local identity with the people of the city and region in which they are located, and provide a source of pride and entertainment to their supporters;

1 (2) professional sports teams are invested with a
2 strong public interest;

3 (3) the public, through a municipal stadium au-
4 thority (which is typically a city or county agency or a
5 municipal corporation), generally authorizes capital
6 construction bonds to finance the construction of the
7 stadium in which a professional sports team plays;

8 (4) normally, the lease or use agreement between
9 the municipal stadium authority and the professional
10 sports team sets rent to defray only the operating costs
11 of the stadium, and does not reimburse the public for
12 the costs of constructing the stadium; and

13 (5) despite the close association with and support
14 from the people in the city and region where they play,
15 professional sports teams may be enticed from time to
16 time to relocate to new geographical locations without
17 regard to important interests and considerations which
18 may be thought to be inconsistent with immediate fi-
19 nancial gain for the owners of such teams.

20 (b) It is the policy of the Congress in this Act to discour-
21 age relocation of any professional sports team which is re-
22 ceiving adequate support from people in the city and region
23 where such team plays, unless such relocation is necessary to
24 prevent severe financial hardship.

PURPOSE

SEC. 3. It is the purpose of this Act to provide people in the city and region where a professional sports team plays the right of first refusal when the owner of such a team intends to relocate the team or when a good faith offer to purchase and relocate such a team has been received.

DEFINITIONS

SEC. 4. As used in this Act, the term—

(1) "Board" means the Professional Sports Team Arbitration Board established in section 7 of this Act;

(2) "league" means an association composed of two or more professional sports teams which, by agreement, have adopted, accepted or put into effect rules for the conduct of professional sports teams which are members of that association and the regulation of contests and exhibitions in which such teams regularly engage;

(3) "person" means any individual, partnership, corporation, or any unincorporated association, or any combination or association thereof;

(4) "professional sports team" or "team" means any group of professional athletes organized to play major league baseball, basketball, football, hockey or soccer which has been engaged in competition in such sport for more than five years;

1 (5) "stadium" means the physical facility within
2 which a professional sports team regularly plays;

3 (6) "territorial agreement" means any agreement,
4 contract, rule, course of conduct or other activity by,
5 or between or among, persons owning or conducting,
6 or engaging or participating in, any professional sports
7 team which relates to the right of a team to operate
8 within a specific territory; and

9 (7) "territory" means the geographic area within
10 which a professional sports team has agreed to operate.

11 **GROUNDS FOR RELOCATION**

12 **SEC. 5.** (a) Except for those cases specified in section
13 7(i) of this Act, a person or league may change the territory
14 or metropolitan location of any professional sports team only
15 in accordance with subsection (b)(1) of this section and only if
16 the appropriate grounds for relocation specified in subsection
17 (b) of this section is met.

18 (b)(1) The grounds for relocation specified in para-
19 graph (2)(A) or (B) of this subsection must be met in
20 any case where a person other than the professional
21 sports team seeking relocation owns the stadium in
22 which the team plays. The grounds for relocation spec-
23 ified in paragraph (2)(B) of this subsection must be met
24 in any case where the professional sports team seeking
25 relocation owns the stadium in which the team plays.

1 (2) As specified in paragraph (1) of this subsection, the
2 following are grounds for relocation of any professional sports
3 team under this Act:

4 (A) The stadium is manifestly inadequate for the
5 purposes of properly and competitively operating the
6 team; the stadium authority demonstrates no intent to
7 remedy the deficiencies of such stadium within a rea-
8 sonable period of time; and other sports facilities in the
9 same territory or metropolitan location have not been
10 made available by appropriate governmental authorities
11 for use by the professional sports team.

12 (B) The professional sports team has incurred net
13 operating losses, exclusive of deductions for depreci-
14 ation and amortization, to an extent that poses signifi-
15 cant danger to the continued existence of the team;
16 and the team, for not less than the most recent three
17 consecutive years, has had attendance records in the
18 relevant league's lowest quarter of attendance records,
19 unless the team's attendance records are equal to or
20 greater than 75 per centum of the capacity of the sta-
21 dium in the case of football, 50 per centum of the ca-
22 pacity of the stadium in the case of basketball, or 35
23 per centum of the capacity of the stadium in the case
24 of baseball.

1 (c) The provisions of this section shall apply to any pro-
2 fessional sports team, notwithstanding any filing by such
3 team of a petition for relief pursuant to chapter 11 of title 11,
4 United States Code. The judge presiding over a proceeding
5 involving any such petition shall perform the functions of the
6 Board specified in section 7 of this Act, except that the judge
7 may, by order, shorten the time periods specified in such sec-
8 tion if the judge determines that such action is necessary or
9 desirable and if such action is consistent with the provisions
10 of this Act and title 11, United States Code.

11 NOTICE OF RELOCATION OR OFFER OF SALE

12 SEC. 6. (a)(1) Any person wishing to relocate a profes-
13 sional sports team to a territory or metropolitan location
14 other than the territory or location in which it is then playing
15 shall furnish notice of intent to relocate the team at least
16 eight months before the proposed date for such relocation.

17 (2) Such notice shall be furnished to the relevant league
18 and to the municipality where the team plays. Such notice
19 shall—

20 (A) be in writing;

21 (B) be delivered through certified mail or be per-
22 sonally delivered; and

23 (C) contain a statement of intention to relocate,
24 the new location, reasons for the relocation, documen-
25 tation supporting the appropriate ground for relocation

1 pursuant to section 5(b) of this Act, and the date on
2 which the relocation is scheduled to occur.

3 (b)(1) When any owner of a professional sports team
4 receives a bona fide offer to purchase such team, and the
5 acceptance of such offer could result in the relocation of such
6 team, the owner shall, either before accepting such offer or as
7 a condition of accepting such offer, provide notice of offer of
8 sale and intent to sell the team at least eight months before
9 the date of any sale.

10 (2) Such notice shall be furnished to the relevant league
11 and to the municipality where the team plays. Such notice
12 shall—

13 (A) be in writing;

14 (B) be delivered through certified mail or be per-
15 sonally delivered;

16 (C) contain a statement that, but for the terms of
17 this Act, the owner would at that time accept such
18 offer;

19 (D) contain a statement of intent to sell, any po-
20 tential location or locations for relocation of the team
21 (if the owner knows of such location), any documenta-
22 tion available to the owner supporting the appropriate
23 ground for any such relocation pursuant to section 5(b)
24 of this Act or a statement that the owner believes that
25 no objection to the relocation of such team will be re-

1 ceived from any governmental entity or that no offer
2 for sale will be made which is greater to or equal in
3 value than the offer which has been received, the date
4 on which the sale of the team is scheduled to occur,
5 and any estimated date for relocation once the sale of
6 the team has occurred, (if the owner is aware of such
7 date); and

8 (E) contain all terms and conditions of such offer,
9 including a written copy of such offer, signed by the
10 maker of such offer.

11 (c) Any person wishing to relocate a professional sports
12 team to a territory other than the territory in which it is then
13 playing or any person negotiating for the sale of such a team
14 which could result in the relocation of the team shall, for a
15 reasonable period of time, offer the team for sale at fair
16 market value to other persons who would continue to locate
17 such team in the metropolitan area in which it plays. If any
18 person submits an offer of sale which would ensure that the
19 team would remain in the metropolitan area in which it
20 plays, notice regarding such sale shall be provided to the
21 Board, together with the information specified in subsection
22 (b)(2) of this section.

23 (d) Any person identified in subsection (c) of this section
24 shall, upon request of the league or the appropriate munici-
25 pality, provide access to all relevant financial records neces-

1 sary to support or refute the grounds for any such relocation,
2 pursuant to section 5(b) of this Act.

3

ARBITRATION BOARD

4 SEC. 7. (a) There shall from time to time be established
5 a Professional Sports Team Relocation Arbitration Board to
6 carry out the activities of this section. The Board shall be
7 composed of three members, who shall be appointed as fol-
8 lows:

9 (1) One member shall be appointed by the current
10 owner of the professional sports team involved in a pe-
11 tition for relocation or offer of sale.

12 (2) One member shall be appointed by the govern-
13 mental authority that regulates the operation of the
14 stadium in which the professional sports team plays.

15 (3) One member shall be appointed by the Secre-
16 tary of Commerce.

17 (b) The Board shall be appointed within thirty days after
18 notice is delivered pursuant to section 6(a)(1) or (b)(2) of this
19 Act. The members shall select a chairman from among its
20 members. Any member of the Board who is not an officer or
21 employee of the Federal Government shall be entitled to re-
22 ceive compensation at a rate not to exceed the daily equiva-
23 lent of the annual rate of basic pay in effect for grade GS-18
24 of the General Schedule under section 5332 of title 5, United
25 States Code, for each day (including traveltime) during which

1 the member is engaged in the actual performance of the
2 duties of the Board. No individual who has (or as a result of
3 sale or relocation, might have) a financial or other pecuniary
4 interest in any professional sports team which engages in the
5 same sport as the professional sports team involved in a peti-
6 tion for relocation or offer for sale may serve on the Board.

7 (c) All notices of relocation or offers of sale regarding
8 the involved professional sports teams shall be referred to the
9 Board. Within six months after the establishment of the
10 Board, the Board shall conduct a formal hearing on the
11 record to consider all such notices of relocation or offers of
12 sale.

13 (d) The Board shall, within seven months after the es-
14 tablishment of the Board, determine if any such offers of sale
15 would ensure that the team would remain in the metropolitan
16 area in which it plays, and are equal to or greater in value
17 than the value of the relocation of the involved professional
18 sports team. The Board shall, to the extent provided in ad-
19 vance by appropriation Acts, contract with an independent
20 actuary for all such valuations. In making any such valua-
21 tion, projected revenues arising out of the broadcasting of any
22 game engaged in or conducted by each team in either its
23 current or future territory shall not be considered, unless
24 such team meets the grounds for relocation specified in sec-
25 tion 5(b)(2)(B) of this Act.

1 (e) The Board shall determine whether the involved pro-
2 fessional sports team meets any of the grounds for relocation
3 specified in section 5(b) of this Act, as appropriate.

4 (f) The Board may not approve any offer for sale or
5 notice of relocation which would result in the involved profes-
6 sional sports team no longer playing in the metropolitan area
7 where it plays if an offer of greater or equal value is received
8 which would continue to locate such team in such area.

9 (g) If the Board determines that—

10 (1) any offer for sale or notice for relocation which
11 has been received regarding the involved professional
12 sports team equals or exceeds the value of the original
13 offer or petition for relocation; or

14 (2) none of the grounds for relocation specified in
15 section 5(b), as appropriate, is met.

16 the owner of such team may not sell or relocate such team
17 without a written commitment, enforceable through specific
18 performance, from any purchaser to continue to locate such
19 team in the metropolitan area in which it plays. The Board
20 shall have no jurisdiction with respect to any other terms of
21 the sale of such team, including the selection of the
22 purchaser.

23 (h) All determinations of the Board shall be final and
24 binding on all parties involved in such arbitration.

1 (i) The provisions of this section shall not apply to any
2 notice for relocation or offer of sale regarding any profes-
3 sional sports team if, within six months after the establish-
4 ment of the Board—

5 (1) the Board has not received any offer to pur-
6 chase such team which would ensure that the team
7 would remain in the metropolitan area in which it
8 plays; and

9 (2) the Board has not received any objection to
10 the relocation of such team from any appropriate gov-
11 ernmental entity.

12 (j) The Board shall not carry out the provisions of this
13 section in any situation in which a judge is performing the
14 functions of the Board, as specified in section 5(c) of this Act.

15 CIVIL ACTIONS

16 SEC. 8. Any governmental entity in a metropolitan area
17 from which a professional sports team relocates may bring a
18 civil action in any appropriate United States district court for
19 damages and relief, including injunctive relief, on the grounds
20 that such relocation did not comply with the provisions of this
21 Act, including the grounds that any owner or other party did
22 not comply with the arbitration procedure or decision pursu-
23 ant to section 7 of this Act.

1 AUTHORIZATION OF APPROPRIATIONS

2 SEC. 9. There are authorized to be appropriated to the
3 Secretary of Commerce, for purposes of section 7 of this Act,
4 such sums as may be necessary for fiscal year 1985. Such
5 sums shall remain available until expended.

6 APPLICABILITY

7 SEC. 10. This Act shall apply to any proposed reloca-
8 tion or sale of any professional sports team which occurs or is
9 intended to occur after January 1, 1984.

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Senator GORTON. We will hear first from our distinguished colleague, Senator Boschwitz.

STATEMENT OF HON. RUDY BOSCHWITZ, U.S. SENATOR FROM MINNESOTA

Senator BOSCHWITZ. Thank you very much, Mr. Chairman.

Indeed, I introduced a bill a little earlier, S. 2050, which can easily be confused with this one, which is S. 2505.

But in any case, it is a pleasure to be here this morning, and I am pleased that the hearing is taking place so soon after the introduction of the bill. Events of the last few days have given this hearing added significance for me and the people of Minnesota that I represent, because in yesterday's edition of the newspaper, Mr. Chairman, it says that a Tampa group has purchased 43 percent of the Minnesota Twins stock. And so perhaps this is the beginning of an initiative to try to move the Minnesota Twins from Minnesota. Forty-three percent is not controlling interest; that continues to be held by Mr. Calvin Griffith and his family. However, it is a major purchase, and it could lead to the loss of the Twins only 4 years after extensive community efforts to produce—a \$55 million domed stadium for their use was completed with the bonds that Senator Kasten talked about and with the obligations that he spoke about undertaken by the community as a whole.

So this event illustrates why we are here today. I have made it no secret that my interest in initiating legislation was sparked by reports to sell the Twins to investors in the Tampa Bay area who intend to relocate the team down there.

Last November I introduced S. 2050, the Major League Baseball Community Protection Act. That bill established the concept of giving communities a right of first refusal when franchise owners seek to sell or relocate their team. Maybe it should be last refusal, so termed, or at least the ability to meet the price so the team can stay in the community that has made a number of efforts, financial and otherwise, to have it there.

S. 2050 will require an owner to notify his community when he or she receives an offer to purchase and relocate the team. A specially established arbitration board would then receive and review counter offers that would keep the team in its current location. If the board determined that any of the local offers equals or exceeds the relocation offer, the owner would be prohibited from selling the team unless the purchaser would commit to not relocate it.

I limited S. 2050 to major league baseball because baseball, as the Senator from Alabama pointed out, is the only sport that benefits from Federal antitrust exemption. That bill reaffirmed baseball's antitrust exemption for those franchises willing to agree to the provisions of the bill.

Since introduction of S. 2050, I have talked to and met with many people about support for the legislation. I have reached two conclusions from these talks and meetings. First, while baseball is the only sport that currently benefits from an antitrust exemption, it seems inconsistent that different rules should apply to baseball than to other major league sports. Therefore, I concluded this con-

cept of a community's right of last or first refusal should be applied to other major league sports as well.

Second, I acknowledge that S. 2050 did not protect against the relocation of a team under current ownership. I am convinced that the right of first refusal should apply to those circumstances as well. On March 29 I joined Senator Gorton, Mathias, Kasten in introducing S. 2505, the Professional Sports Team Community Protection Act.

S. 2505 gives the communities the right of first refusal to purchase teams that would otherwise be relocated—not the communities so much but as private individuals to purchase that team, whether by sale or under current ownership. It also applied this concept to all major league sports.

Some critics will argue that these bills are antifree enterprise; that the Government has no role in the movement of franchises; it should keep its nose out of it.

Well, Mr. Chairman, I was a businessman prior to coming to the Senate. I would argue that there is probably no greater advocate of the free enterprise system in the U.S. Senate than I am. But I want to tell those critics that if the warehouses that I used to run were built with public funds provided by the State legislature, and the Federal Government allowed me an antitrust exemption so I could prevent any competitors from moving into my area, I would not claim to be running a free enterprise operation. If that were the case, I could charge high prices and put out low quality perhaps, and if no one came to shop in my stores, I could pull up stakes and move to any area where no similar business was operating, and there would still be a great deal of value to the franchise.

And really, that is what is happening in Minneapolis. The team was unfortunately run into the ground, but the franchise still has value. And I would again be able to relocate to prevent any competition from coming into yet another area. In the real world I cannot charge high prices for low quality, but if you operate a baseball team in a publicly-financed stadium in downtown Minneapolis, you can.

Mr. Chairman, I again want to express my gratitude for your scheduling this hearing. It is a good bill. It will protect all communities that are the homes of sports franchises.

I also want to express my gratitude to the Chairman for his work on this issue. As a former attorney general from the State of Washington, he has had a great deal of experience to draw upon, dating back to lawsuits concerning the Seattle Pilots.

Finally, Mr. Chairman, the mayor of Minneapolis is here, Don Fraser, who is going to be testifying a little bit later. He is a former Congressman who is now mayor of Minneapolis, and he knows as well as anyone the importance of professional sports in Minnesota. I am looking forward to hearing from him. I would like to ask him to join us at the table at the present time, though I understand that he may testify later.

Senator GORTON. Next we would like to hear from two distinguished colleagues whose wounds in this area are the freshest of all the members of this body. The two distinguished Senators from the State of Maryland have experienced the serious problem of the loss of a major league sports franchise without, in my view, any

justification from the point of view of the support which their community, Baltimore, has provided for that franchise.

We will hear first from Senator Mathias.

**STATEMENT OF HON. CHARLES McC. MATHIAS, U.S. SENATOR
FROM MARYLAND**

Senator MATHIAS. Thank you, Mr. Chairman.

I am certainly pleased that you and the members of the committee have moved so quickly to schedule this hearing. My appreciation stems not merely from the fact that I am a co-sponsor of S. 2505, but also because I have been actively engaged in this problem for about 2 years, and I think the time has come to really move it along.

My first bill on this subject was introduced about a year ago because I thought we really had to clarify the legal relationship between the sports franchises and the communities where they exist.

Under that bill, a major league team that had been located in one city for 6 or more years could not be moved to another city unless one of the following conditions was met: that a party other than the professional team breaks the stadium lease agreement; or that a stadium or an arena is inadequate, and the stadium authorities are unwilling to make the kind of adjustments that are reasonably necessary; or that the team incurs annual net losses for at least 3 years preceding the relocation; or, finally, that the local government does not object to the relocation.

Now, those conditions, it seems to me, were objective, reasonable standards that might be applied to any professional team. The bill that is before the committee today takes a slightly different approach, and whatever the theoretical advantage of one over the other, both this bill and my first bill seek the same objective—sports franchise stability.

People in sports franchise cities of course have a deep emotional attachment to, and a bona fide interest in, the local teams, and that interest must be recognized and protected by the law.

And I must say, Mr. Chairman, that the tawdry drama that was enacted under cover of darkness in Baltimore a few weeks ago is all the evidence that this committee should need to spur it to action.

When the owner of the Colts slunk out of Baltimore in the middle of the night—

Senator LONG. Point of order, Mr. Chairman.

I thoroughly agree with what the Senator is saying, but I think that we should remind the audience that they are bound by the rules of the Senate that they are not permitted to have a demonstration.

Senator GORTON. Senator Long is correct.

Senator LONG. I thoroughly agree with the Senator. Please understand that.

Senator MATHIAS. Mr. Chairman, I apologize. Maybe I am the one who is guilty because I was too emotional.

Senator LONG. If I were in the same place I would have been equally emotional, Senator.

Senator GORTON. The audience is reminded, however, that the rules of the Senate apply here, and there should be no public demonstrations of agreement or disagreement with the witnesses.

Senator MATHIAS. Let me say it again at a lower level of decibels.

Senator HEFLIN. I might say this: that the rules of the Senate do not in any degree control or try to limit Senator Mathias' eloquence.

Senator MATHIAS. Thank you, Judge.

When the owner of the Colts slunk out of Baltimore in the middle of the night, he abandoned people who for 31 years had supported and subsidized him, and he broke faith with a great city.

Unless Congress addresses this problem promptly and decisively, then the Colts and all the other teams will play their home games in unfamiliar towns, and the towns that have sustained them through good years and bad are going to be left high and dry.

Now, I think we are all aware of the importance of professional sports to American life. Baseball, for example, is called the national pastime, and, along with apple pie, it serves as a standard analogy for what is American. Sports teams are sources of community cohesion and civic pride, as I know my friend Don Schaefer will testify to in a moment.

Sporting events are our favorite entertainment, sports players our national heroes. But as any Baltimorean will tell you with some considerable bitterness, beyond these intangible factors lie some very hard-boiled business interests.

For many years teams have enjoyed a preferred status under the Federal antitrust laws, which is a status not shared by any other American business. In return for this special consideration, the owners have, I think, generally respected the interests of the local community and of the dedicated fans. But lately I detect a weakening of that self-restraint.

We all saw what happened in Oakland. After years of sellout crowds, after millions of dollars in municipal investment in stadium complexes, and freeways, the owner moved the Raiders to Los Angeles, and even the National Football League could not stop him. No one in Oakland would have been surprised if the owner on pulling out had just turned around and shouted over his shoulder the famous cry of William Henry Vanderbilt, "The public be damned."

Well, with this bill I hope we can remind the owners that they owe an obligation to their home towns that transcends the bottom line.

When a team abandons its home town, it causes serious economic and social and spiritual dislocation. It causes empty stadiums, unemployment, and heartbroken fans.

Obviously we need more effective means to protect the local interest. Senate bill 2505 will protect the interest of both the cities and the fans who have stuck with the teams through thick and thin. The bill does it without affecting sports league broadcasting or revenue sharing policies, and it does it without dealing with the labor-management issues or with the various policies and practices of sports league operations.

I must say, Mr. Chairman, that I have some reservations about some of the details of the bill, because it currently provides no

clear ground rules for guiding the sports league relocation decisions. Clear standards for handling relocation decisions would ensure fairness for all the parties: for the leagues, for the owners, for the players and for the fans. I look forward to the testimony, which will explore this issue further.

Ultimately it may be necessary to incorporate into the bill some standards, and I would respectfully submit those standards in my earlier bill as a possible model.

But in any event, I hope we can work out a kind of narrow compromise that eliminates the problems. We have to make sure we don't give the leagues any unbridled or unreasonable power. We should set out a clear relocation standard for the leagues to apply, and then we should allow opportunity for those decisions to be reviewed by the courts. Once we do that, I think we ought to have the makings of a deal that is fair to all sides.

I might just say in concluding that last year I did not include a retroactivity provision in my bill because I did not want to complicate its passage. As Judge Heflin knows, retroactivity in antitrust bills is a sure ingredient for trouble in the Judiciary Committee. But at that time, of course, it would have put the Congress in the middle of that great dogfight between Al Davis and the National Football League.

Times have changed. The situation has worsened. The Colts have left Baltimore. And right now just a little bit of retroactivity would suit me just fine.

Well, there is a lot more to be said about this bill and about the events that precipitated it. There is even a little more to be said about perfidy. But because I do not want to delay the passage of the bill in even the smallest way, I will conclude at this point.

Senator GORTON. Thank you very much, Senator Mathias.

We will now hear from our distinguished colleague, Senator Sarbanes.

STATEMENT OF HON. PAUL S. SARBANES, U.S. SENATOR FROM MARYLAND

Senator SARBANES. Thank you very much, Mr. Chairman, members of the committee.

I want to commend you, Mr. Chairman, for your initiative in this important matter. I have been pleased to join in cosponsoring the legislation which you have introduced. Obviously, some of us here at the table are motivated by what we have experienced; and as I listened to some of the opening statements, I realized that others are being motivated by what they hope to experience.

I think it is very important for us to stop for a moment and recognize that there is a very real, urgent and pressing problem here that I think the Congress must address. This unwarranted shifting of franchises which is taking place I think is a potential threat, to every city which now has a major professional sports team.

I could have brought any number of books about the role of sports in American life and how essential it is to the life and vitality of a community, but I think we all know and understand that. And a great deal of the interest which surrounds it—and is reflected in this very hearing today—is a manifestation of that.

Now, you are going to be hearing later from the three mayors that are here, distinguished mayors: Mayor Fraser from Minneapolis, and Mayor Wilson of Oakland, and our own mayor from Baltimore, William Donald Schaefer, a man of exceptional drive and resourcefulness who has really created an urban renaissance in Baltimore, and a man of infinite patience. I do not know whether Mayor Schaefer will talk about what he has been through in his effort to keep the Colts franchise in Baltimore, but I hope if he does not volunteer it, the committee will draw him out on it. Because if you talk about effort above and beyond the call of duty, that is what Mayor Schaefer undertook in order to keep this franchise in our city.

The Baltimore Colts helped to create the National Football League. The 1958 championship game, the game of all games, gave a tremendous impetus to the strength and prosperity of the National Football League. And now we have had an owner simply take this franchise and move it out of Baltimore in the middle of the night, downgrade it while he was there, and create the situation that we now confront in our city.

What is happening is that these franchises are being shopped around the country, and the cities or the metropolitan areas, in an effort to get them or keep them, are virtually paying ransom. In other words, they come in and they seek leases that are almost giveaways. They want the city to guarantee a certain number of ticket sales. They obtain all of the concessions.

The moneys that the localities are laying out in order to either keep the franchise or to obtain it are very significant. We deal every day here with efforts to provide financial assistance to our localities across the country. And here you have a situation in which irresponsible owners whose franchises had a relationship with the community over an extended period of years, where the communities have been supportive, where it has been profitable, where the community is prepared to do reasonable things to accommodate the franchise, nevertheless put them on the auction block and go to the highest bidder, and move them out of the community.

I notice that Congresswoman Mikulski is here from Baltimore and I assume will be shortly testifying. She has introduced comparable legislation in the House of Representatives.

I think that this legislation designed to address this relocation process I described is extremely important legislative business. The owners ought not to be able to simply pick up the franchise in the middle of the night, and as Senator Mathias has said, sneak out of town, which is exactly what happened in Baltimore in the most disgraceful fashion.

There ought to be serious and well-considered thought given to the legitimate interest of the city and the community in this sports franchise. Municipalities make large investments in a team, investments in terms of financial resources put into the facilities, favorable tax structure, and the community in a broader sense makes a large investment in terms of its commitment and support for the franchise.

Major league sports teams are not simply another business. They are a partnership in a very real sense among the owners, the play-

ers, and the community, and they ought not simply to be auctioned off to the highest bidder.

This legislation I think is reasonable, common sense legislation. The basic premise of it is that before an owner could relocate, he would have to demonstrate that he has good cause to do so. If it can be shown that the present playing facility is manifestly inadequate and the locality has no desire to improve the facility to a reasonable standard, or if it can be shown that the team is experiencing such financial hardship that its viability is imperiled, and that no local offer is forthcoming, then it becomes reasonable in those circumstances, I believe, and the legislation provides, to discuss relocation.

But if an owner wishes to sell a team for whatever reason, it seems to me that he ought to be required to go through a process that would give an opportunity for a local offer that is equal to the best reasonable offer with respect to relocation.

Now, that is not taking his property. If he does not get a matching offer and the other conditions are met—namely that there are grounds to go because they are not giving him adequate facilities, or people just are not supporting the team and the attendance has dropped off—if those conditions are there, and he wants to take it out, and a local group will not match the offer, he can take it and get the other offer.

This bill provides for an arbitration board to evaluate the offers made for purchase or relocation of the team. I think that is an ingenious proposal, and it is one that I think would assure equity. We may have to consider writing some clear standards as to how that board would apply, but I think the process in the bill which provides the opportunity for local purchase before the team is taken away when the conditions of insufficient support or inadequate facilities have been met gives us the opportunity to assure that we are not going to encounter what city after city is now experiencing where they have provided adequate facilities, strongly supported the team, created a profit over the years, made a major community commitment to this franchise, and then have it simply taken away on the basis of placing it on the auction block for the highest bid.

I again commend the committee for moving quickly on this legislation. I think we have an opportunity here to write some rules that will ensure fairness and equity with respect to these franchises, and in particular will recognize the community commitments that have been made in many, many cities across the country to support these sports franchises.

They have been embedded in the life of our communities, and an owner ought not simply, when he is not under either the financial pressure or the pressure of being inadequately provided for in terms of his facilities, place it on the auction block, shop it around the country, move it out of town in the middle of the night, and leave many, many people who have been strongly supportive over a long period of time in the lurch.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. PAUL S. SARBANES, U.S. SENATOR FROM MARYLAND

Mr. Chairman, thank you for this opportunity to appear before the Committee in support of S. 2505, the Professional Sports Team Community Protection Act, of which I am a co-sponsor. This legislation is part of an effort to help America's cities and sports leagues to deal with a growing problem—the abrupt and unwarranted relocation of professional teams. This problem, which is occurring with increasing rapidity, can be demonstrated by recent events in major league football. In the 52 years since the founding of the NFL, only 10 teams have relocated, yet 2 of them have done so in the last 2 years. With more moves predicted in the near future in the NFL and in other leagues, it is clear that Congress must approach the problem now.

We have with us today Mayor William Donald Schaefer of Baltimore, a man of exceptional drive, resourcefulness, and patience, who has spent the last 14 years in a fight to keep Baltimore's major league teams in town. The Mayor will be able to tell the Committee about the impact the loss of a team has on a city, and about the ordeal of negotiating lease agreements with teams owners.

The climate in professional sports today is such that any city that wants to keep or attract a team must be prepared to provide an elaborate stadium complex. It must be willing to offer the owner a "sweetheart" lease agreement which barely covers the operating costs, and then provide tax exemptions. Many cities will agree to guarantee ticket sales at a certain level, and allow the owner to select the concessionaries. What we are faced with is a process in which cities engage in a bidding war, committing large sums of municipal funds to building projects or refurbishing programs in an effort to provide the most attractive facilities possible. Combined with the generous terms offered in lease agreements, and the various tax exemptions, a serious and wasteful drain is placed on the cities' resources.

These advantageous lease agreements come at a time that the leagues are signing record television broadcast contracts with the 3 major networks. In 1982 the NFL negotiated a contract with the Networks amounting to \$2.7 billion paid over a 5 year period extending through 1986. This works out to \$14.8 million per team each year, and does not include the separate agreements each team is free to work out with local stations. Just this year major league baseball came to an agreement with the networks worth \$1.2 billion through 1989, with \$268 million being paid the first year. Once again, the individual teams may make their own local deals totalling \$105 million in 1984. These contracts practically guarantee handsome profits for the teams each year.

It is my belief, and the intention of this legislation, that the current relocation process ought to be reformed and regulated. Owners ought not to be able to just pick up their team in the middle of the night and whisk it away to some other city without serious, well considered thought given to the legitimate interests of the city and community. We all must recognize that municipalities make a big investment in a team, in terms of financial resources poured into facilities, favorable tax structures, and general support of the team. Major league sports teams are not just another business, but a partnership among owners, the players, and the community, and because of that unique status cannot be simply auctioned off to the highest bidder.

Before a relocation can occur, an owner should be made to demonstrate that he has good cause to move the team. If it can be shown that the present playing facility is manifestly inadequate to be utilized for major league competition without any evidence of the city's desire to improve the facility, or that the team is experiencing such financial hardship that its existence is imperiled, and no local offer of comparable value is forthcoming, then it becomes reasonable to discuss relocation. But if an owner wishes to sell the team, for whatever reason, he should be required to accept the local offer that is equal to the best reasonable offer involving relocation. A team should be able to make a return on the owner's investment, but increased profits must be balanced against the community's investment. If an owner can demonstrate fulfillment of these conditions, then an arbitration board should begin to evaluate the offers made for purchase or relocation of the team. It is important that at this pass, local interests should be given the opportunity to submit for consideration an offer that would keep the team in the city. In other words the city should be given a "first right of refusal" in purchasing the team or offering alternative solutions. The emphasis must always be on preserving the continued presence of the team in its traditional territory, regardless of who owns the team.

Mr. Chairman, while there are still many specific provisions to be worked out, I believe that S. 2505 is an important step in focusing the attention of the Congress on this important concern. As the Committee and eventually the Senate considers

this issue, we should keep in our minds the essential importance of working out a fair, balanced process which stresses the importance of conditions for relocation, an arbitrating board to determine that the conditions are satisfied, and to evaluate purchase offers, and a procedure to determine which offers will be accepted under various conditions. I look forward to working with my colleagues in the Senate, and other interested parties so that we can quickly work out some policy to deal with this problem.

Senator GORTON. Thank you very much, Senator Sarbanes.

I would like to thank all three Members of the Senate who have testified here with us, and invite any of them who wishes to do so to join the committee here for all or a portion of the balance of the hearing.

We are now privileged to hear from two of our distinguished colleagues from the House of Representatives, Congressman Stark and Congresswoman Mikulski from the State of Maryland.

While they are moving forward, we will include a statement by Senator Quayle of Indiana for the record.¹

We are delighted to welcome our colleagues from the House here today with us. We will begin with Congresswoman Mikulski.

**STATEMENT OF HON. BARBARA ANN MIKULSKI, U.S.
REPRESENTATIVE FROM MARYLAND**

Ms. MIKULSKI. Thank you, Senator Gorton, and other friends of the fans. I am delighted to be here before this committee. And Senator Gorton, it is very reminiscent to appear when this legislation, as I am sure it is in relationship to some of the battles you have fought as attorney general of Seattle. There you earned an outstanding reputation as a consumer protection advocate, stopping land speculators and land grabs; and somehow or other we are in the same atmosphere of other types of grabs and deals.

You have heard my other colleagues from Baltimore talk about what the Colts did to us, how in the middle of the night they were moved from the city of Baltimore, taking with them trophies, uniforms, equipment, leaving an empty stadium and the broken hearts of millions of fans.

For 31 years we fans cheered our Colts on to three world championships. We stood by them in good years, and we supported them in bad. I think what the Colt owner did was wrong. Before moving this team he shopped from city to city as if he were looking for a site for a fast-food franchise.

I believe that professional sports teams should be allowed to leave cities for financial need, but not for financial greed. The Professional Sports Team Community Protection Act, which I have introduced in the House, and it is identical to the legislation pending here in the Senate—my bill is H.R. 5403—would provide that protection because it is absolutely needed.

A community has very little, if any, recourse to prevent a professional sports team from enjoying the many benefits a devoted community has to offer and then stealing away when the owner perceives greener or greedier pastures elsewhere.

¹ See p. 151.

For too long, devoted fans of professional sports have tolerated the certainty of higher ticket prices and then the uncertainty of the team's location each year.

This is not a parochial, petulant outburst. This legislation has national significance, as we can see from the wide-ranging number of people testifying, from the variety of mayors testifying.

Baltimore is not the only casualty of these arbitrary sports teams moves. Oakland lost its Raiders, New York lost its Jets, and as you, Senator, know too well how Seattle lost its baseball team, and now other cities might lose football, baseball, basketball, soccer or hockey.

The Professional Sports Team Community Protection Act recognizes the important role, both emotionally and financially, that sports teams have in their respective communities. My legislation, like yours, gives hometown cities the right of first refusal if a sports team wants to move, and it also shows that it has lost money. It has a three-person arbitration panel to decide whether a team has valid reasons for leaving a city.

Sports teams are a source of revenue for a city and a source of community pride. Cities that invest taxpayers' dollars in facilities for sports teams and fans who invest their emotions should be protected.

I believe my legislation would do just that. The reason I am interested in it is not only for the economic reasons for the Colts, but also for two other reasons. No. 1, I do not want to see any other Mayor or Governor humiliated by a capricious owner the way mine was. Senator Sarbanes referred to that in terms of the way we offered a variety of incentives for them to—for the Colts to stay, only to have it not only rejected but cavalierly thrown back in our faces. I do not think 31 years of support should do that.

In 1953 when the Colts were going to come to Baltimore I was a junior at a school called the Institute of Notre Dame. I remember when Carol Rosenbloom, the owner, wanted to bring the Colts, and they had marathons and telethons and phoneathons to raise ticket sales. My uncles, back from World War II, and other men returning from Korea put up their money in what was then an unknown entity; but we wanted a team, and we were ready to go and support it.

One of the great pleasures in my life was in the late 1950's to graduate from college and to have my own money to buy my own Colt ticket and go out to Memorial Stadium with my Uncle Fred.

And we loved the Colts. We loved that little vacuum pouch of whiskey sours we carried. And on those cold, crisp days while we smelled the tangy air we watched Lenny Moore, and Alan Ameche and Gino Marchetti burn up the playing fields; it was fun. In a world of uncertainty and turmoil, it was nice to know about the stability of a Sunday afternoon where at least somewhere in the world the good guys would win. And that is why I want to protect the Colts football team.

I yield back what time I might have.

Senator GORTON. Thank you very, very much. Congressman Stark, how can you top that?

STATEMENT OF HON. FORTNEY H. STARK, U.S. REPRESENTATIVE
FROM CALIFORNIA

Mr. STARK. Senator Gorton, I really cannot. I could just add to my colleague's enthusiasm.

I hate to start testimony—but I appreciate your letting me have this opportunity—with an I-told-you-so, but I bring wishes from Senator DeConcini and myself, who over a year ago had the same concern with the capricious disappearance of the Oakland Raiders to Los Angeles. And we said at that time this is not parochial; this is going to come and haunt each and every Member of the Congress of the United States. And I am sure that this bill would pass out of this committee and pass on the floor of the Senate if I could merely announce to you today that the Packers were moving to Chicago, and the Giants were moving back to New York, and the Saints were going to move to St. Louis. And pretty soon we would have unanimous approval of a bill of this nature out of this committee, and it would not take long before it would whisk through the floor of the House.

I want to emphasize three points, and I have prepared testimony which has been submitted to your committee.

Senator Gorton. It will be included in the record.

Mr. STARK. I appreciate that, Mr. Chairman.

The first item that we have tried to make clear for so long is that the public has an interest in these teams. Senator Long and I know full well—we have been on so many tax conference committees together—that we provide tax breaks, huge tax subsidies to the owners, the players, the electronic networks, and the communities for these teams. These teams are operating on the backs of the average taxpayer in the United States. They are not a free enterprise. They are given exclusive contracts to protect them in electronic broadcasting. They are allowed to depreciate players. Not since prior to Reconstruction have we had individuals allowed to be depreciated.

The stadium provided for the spectacle is provided with a subsidy of the average American taxpayer and not necessarily the taxpayers who enjoy the spectacle. It may come as a surprise to the people in this room that not every American citizen is a fan, and you have all heard the term "football widows" or "football widowers."

So I would suggest, if I may presume, Mr. Chairman, some additions or some amendments to the bill. One would be that we not put the financial burden, however modest it is, on all of the taxpayers in this country, but that we think about a user fee or a fee to be paid out of the gate or out of the television proceeds or by the team. It is a modest amount to support this board, but I do not think we should put that additional burden on the Treasury.

There is the issue of retroactivity. You will hear later from Mayor Lionel Wilson, who is Mayor of Oakland and previously was a jurist of some renown in our State of California. I think it was this Mayor who dreamed up the idea of an eminent domain suit to buy the property. I am not sure that that was our first choice, but I think it typifies the urgency which the fans in the entire Bay Area, encompassing many communities, many cities, many congressional

districts, place on having their team, their Raiders, back in the community.

I would like you to think about retroactivity. It is nothing new to us. Certainly in the taxwriting business on both sides of this Capitol, retroactivity comes up often; and we have used it for the good guys and the bad guys; and it is nothing new to our legislating.

The other thing that I think is missing is some clear protection for the fans. It would be possible for the board and the league, acting without the consideration of the community, to take a profitable team in an adequate stadium and move it. And it seems to me that what we had asked earlier is the team ought to show: one, that the stadium is inadequate, and the community is unwilling to bring it up to adequate standards; or two, that a contract is breached; or three, that the team is losing money, say for 3 years, that it really is going broke and it is a financial hardship to stay. Show one of these and the team could move.

But it seems to me that these fans who, after all, buy the six-packs and the underarm deoderant and the caps and the tickets that provide these munificent salaries for the players and the profits for the owners, should be protected.

And then I would like to say you are going to hear from the players, and I want to point out that there is nothing in your legislation, Ms. Mikulski's legislation, my legislation that would interfere with the contracts between the players and the teamowners. So the players, by opposing this, I think are turning their backs on the fans.

And I would like to just mention something that is important to everyone in this room who is here in a professional elected capacity. If we were to turn our backs on our constituents and I were to negotiate with Senator Long, for instance, and suddenly in the middle of the night end up as the Senator from Louisiana and he the Congressman from the Ninth District of California encompassing Oakland—and he would have gotten the best of the deal—but I am sure that our constituents would rise up and turn against us and not countenance that.

We go back every year, every week, every month to our constituency. I would urge the players to consider that it is the fans who are their constituents; and if they are superstars, it is the fans who make them that. And as we all know in this room, those can change overnight if we do not pay attention to our fans, our constituents. And I would urge you to think when you hear the players testify against this bill, that it may be in their best interest, but their status can only be protected by the fans.

I want to thank all of you who have supported this legislation. I want to assure you that we in the House will move rapidly. We appreciate your taking the lead on this vital legislation, and we stand ready to help in any way we can. And I would be glad to answer any questions in any time remaining.

Thank you, Mr. Chairman, for having us here.

[The statement follows:]

STATEMENT OF HON. PETE STARK, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman and Members of the Committee: I would like to thank the Committee for this opportunity to speak on S. 2505, the Professional Sports Team Communi-

ty Protection Act. I have counterpart legislation in the House and I understand you are considering amendments to the bill.

With the Oakland Coliseum in my area, the issue of sports franchise relocation is one that I am keenly interested in. While not the most ardent football fan, I *am* a fan of the 1,200 direct jobs and the 6,000 indirect jobs that the Raiders provided in Oakland. I am also a fan of the taxpayers trying to pay off the bonds on the Oakland Coliseum. The Raiders provided over \$100 million dollars annually to the community and gave national recognition and pride to a city that is often overshadowed by our neighbor across the bay.

Franchise re-location is occurring with such increasing frequency, with teams flying across the country, that one would think a league like the NFL has poltergeists.

This bill is a new approach to the problem of franchise relocation. As you know, in the past we have tried to deal with the problem by changing the anti-trust laws. That has not worked. I would like to commend Senator Gorton for introducing what I think is basically a sound way of dealing with a growing problem.

And it is a growing problem. Since January, two out of 28 football franchises have moved, NY and Baltimore. Rumors have been flowing about various other owners wanting to relocate. In the next 3 years, 5 football teams alone will have their stadium leases up. All have the potential and if what is happening is any indication, a high likelihood of moving to another city. At a minimum, it will become increasingly expensive for a city to have a sports franchise, as teams force cities to bid against each other with taxpayer's money. It is a giant game of musical chairs with the taxpayers and the fans always left standing.

There are no lack of other cities that would like to have a team. I believe that Indianapolis is only the beginning of the emotional merry-go-round that fans are going to go through if something is not done.

My greatest concern with legislation of this type is how do we guarantee the maximum protection of the fans and the cities. Both bills that I have introduced in the House contain standards that would have to be met before a team could move. The team would have to show that the stadium authority had in some fashion abrogated the stadium agreement in a significant way or that the stadium was inadequate. Alternatively, the team would have to show that it had been losing money for 3 years. When one of these conditions is met, then the team could consider moving. It is my understanding that the draft version under consideration today does not contain these minimum standards. I think that it is of the utmost importance that we provide the greatest possible protection for the cities and the fans and not create a closed game that goes on between the league and the teams: the public should also be players!

The public has earned the right to be a major player in the game of franchise relocation. The taxpayers contribute cold cash beyond buying tickets. Tax exempt bonds are used to build stadiums. Roughly, for every 1 billion dollars in tax exempt bonds, there is a direct yearly cost to the federal Treasury of \$30 million.

Other tax advantages given to sports franchises include being able to write off the purchase price of a team. A recent article in the Austin American-Statesman reported that the sale of the Dallas Cowboys was a \$60 million deal. The article estimated that 50 to 75 per cent of the purchase price can be depreciated over the next 5 years. That is a taxpayer contribution of between 15 and 22.5 million dollars just for depreciation for the Dallas Cowboys alone!! This can be done because sports teams can depreciate players as assets. In fact this is the only business that can depreciate people!

When an owner sells a team that he has held for more than a year, any capital gains that the owner earned are taxed at the capital gains rate and not at the rate of ordinary income. Again, the Dallas Cowboys case, the appreciation of the team went from \$600,000 to \$60 million. The tax savings at capital gains rate could be as much as 30 cents on the dollar for each dollar of appreciation.

Additionally, baseball is currently exempt from anti-trust laws and the other leagues hope that the Supreme Court will say that they are! Sports franchises have received consistent, substantial help from the taxpayers. The taxpaying public should have a voice equal to that investment.

I am concerned that the way the board is constructed under one Senate draft proposal, that a city and the fans do not have the kind of protection that is provided under the bills with standards. The board with an affirmative vote by the league and the Commerce Department member, could move a profitable team from an adequate stadium over the objections of local governments. One solution to this would be to require that the board have a unanimous vote on any proposed move.

Contrary to the belief of the majority of the people in this room, not everyone is interested in sports. Many are the tales of the proverbial football widow. The funding for this legislation as proposed comes from general revenues. While perhaps only \$100,000-\$200,000 per year, one can only imagine the tax protests that would take place from these newly offended people, especially since they have little to entertain them on Saturdays and Sundays. I suggest a fairer way of funding the board would be to impose a small fee on the various leagues or teams. Let us leave the Treasury out!

I also think it is important to state in the bill that the legislation in no way affects contracts between players and owners. In fact, it might keep the players from having to sell their houses as often, since teams would be more stable.

Mr. Chairman, I appreciate the Committee acting on this important in such an expeditious fashion and thank you for this opportunity to testify.

Senator GORTON. I should like to thank both of the distinguished Members of Congress.

Senator Long.

Senator LONG. I would like to address myself to Mr. Stark for a moment.

I think you, Mr. Stark, have put yourself on the key point here. It is the public interest. The public does have an interest in this matter. And there is no doubt about it that you are right when you say that we have been good to the league. I mean I do not think anybody could complain about that. I would be surprised if they are complaining.

I had to pass a bill to merge those two football leagues. We did not pass it so everybody could merge. We passed it so those two leagues could merge. I am not sure the players were in favor of that at the time. Some of the player representatives were not excited about it.

Mr. STARK. If the distinguished Senator would yield on that point, we specifically mentioned two teams in that legislation, the Oakland Raiders and the New York team who were not to move.

Senator LONG. The point here is that we have done a great deal for those to help make this a moneymaking deal, a good deal for all concerned. And all we really ask is that they respect the public interest, too.

When a community has made the kind of sacrifice that many have—and I am not as well informed on what others have done as I am with regard to New Orleans, but I know in New Orleans we paid a big price. We built the stadium. That cost us \$200 million. We will never get our \$200 million back except from the fallout benefiting the community. So having paid an enormous price—and we are not complaining about the price we paid, nothing of that sort, and we are willing to do anything within reason to see that the owner makes a profit; and we are not arguing with him at this moment. That is one of the reasons I guess the mayor of New Orleans is not here to testify alongside of you.

But we do feel that they owe some consideration to the public interest in making these decisions. And just speaking as one, I am not complaining about the attitude of the league. The league franchised that team just like they franchised the team in Oakland and the team in Baltimore. And we do not have any complaint with the league. We have a complaint with individual owners who see a chance to make more money somewhere else and break the faith with the people in doing so. And I by myself am compelled to support your position on this.

Now, we could more easily pass a bill without retroactivity, there is no doubt about that. But if we are going to pass a bill, it seems to me sometimes that those who do mischief at some point ought to get burned for doing it; that it would discourage others who might have similar thoughts in mind. So I find a great deal of appeal with your statement.

Mr. STARK. I thank the Senator for his judicious use of good Christian ethics in that statement.

Senator GORTON. Senator Lautenberg.

Senator LAUTENBERG. If I might, Mr. Chairman, I just want to set the record straight that my silence during Representative Mikulski's statement does not in any way suggest approval of her lament about New York having lost its Jets. The Giants that play in New Jersey are called simply the Giants. They are no longer called the New York Giants but we do not call them the Jersey Giants either, although I think that we ought to. But we service that whole metropolitan area, and the fact of the matter is the fans love the short drive to New Jersey to that stadium with adequate parking and security and all the good amenities.

And while I agree that the team has a community responsibility perhaps above all, the fact is the community has a responsibility to the team as well. And when we invite in the teams to join us in our facilities, our brandnew facilities with its job creation, New Jersey was saying, in effect, we are sick and tired of being a second-class community and having to go to either New York City or Philadelphia to see a major league sports franchise play.

So that if you would, please, allow me to be clearly on the record as not identifying with the implied criticism of the move of New York teams. The area gained stature and gained facilities and, as a matter of fact, gained excitement.

So while I agree with much of what is being said, I cannot agree with the implied criticism. I would also ask for some care with the retroactive date. I could probably handle something that fill sometime after March 15.

Senator BOSCHWITZ. I believe the Dodgers are still called the Dodgers, too.

Senator LAUTENBERG. I do not want to change the second name. It is the first name. They are not called the Brooklyn Dodgers, that is for sure.

Senator GORTON. Are there any other questions for the members of this panel?

[No response.]

Senator GORTON. If not, we should like to thank both of you very much for being here. And we will now hear from a panel of distinguished mayors: William Donald Schaefer of Baltimore, Lionel Wilson of Oakland, and Donald Fraser of Minneapolis.

Before the committee welcomes and receives testimony from this panel of witnesses, there is one matter that I would like to make clear for the record. As it always does, this committee has made every effort to ensure that this is a fair and balanced hearing, and it has tried to encourage the participation of a variety of parties which it thought may have an interest in this legislation.

A number of those who were contacted by the committee for one reason or another declined that invitation. For example, leagues

representing two professional sports which will be touched by the provisions of S. 2505, basketball and hockey, are not able to appear before the Commerce Committee today. Both leagues are now in their playoff seasons, and priority commitments have precluded us from having the benefit of the testimony of David Stern, commissioner of the National Basketball Association, and John Ziegler, president of the National Hockey League.

The committee was advised of their situation by letter. A copy of the letter sent on behalf of the NBA and the NHL will be submitted for the record and will appear at the appropriate place.¹

Senator GORTON. While the committee appreciates their dilemma, it is anxious to have their views on this bill and strongly suggests that they submit a written statement for the record. Indeed, the record will remain open for 2 weeks from today for those who wish to submit written statements.

Similarly, the committee has sought the participation of individual team owners. We understand that the league officials we will hear from today represent the owners of teams which play in those leagues. It was felt, however, that certain individual owners would be uniquely situated under the provisions of this bill; fairness required that they be given an opportunity to come and share their views with the committee. While none of them could be with us today, we welcome any statements that they may wish to submit in written form for the record.

Having said that, I am advised that a telegram was sent to the committee yesterday voicing the strongest possible objection of the now Indianapolis Colts to S. 2505. A copy of the telegram will appear at this point in the record, without objection.

[The telegram follows:]

Telegram

THE INDIANAPOLIS COLTS,
Indianapolis, IN, April 26, 1984.

SENATE COMMERCE COMMITTEE,
Capitol One, DC.

Please be advised that the Indianapolis Colts registered the strongest possible objection to Senate bill 2505. The Colts believe said bill to be unconstitutional and a total repudiation and violation of the basic principles upon which America was built.

MICHAEL G. CHERNOFF, Vice President.

Senator GORTON. With that I would like to welcome this panel of distinguished witnesses, and we will start with Mayor Schaefer of Baltimore. Or, Mayor Wilson, would you like to go first?

I would like to say to each of you that your entire written statements, to the extent that you have submitted them, will be included in the record.

Senator MATHIAS. Mr. Chairman, could I just say one word—and I do not want to delay Mayor Wilson—a word that goes to the weight of Mayor Schaefer's testimony, to the weight that the committee may give to Mayor Schaefer's testimony. Because you know when a coach sends a team out on the field, he says, "Give them all you have got." Well, Don Schaefer is a fellow who gives them all he's got.

¹ See pp. 152 and 154.

When you talk about the residential character of the inner city, he knows, because he lives in the inner city. And when you talk about fighting for your constituents, one time in my presence he physically took on a member of the President's Cabinet who he did not think was giving adequate attention to the interests of the citizens of Baltimore.

So he is a mayor who gives it all he's got, and when he tells you what he did in the Colt situation, you will know that everything that could have been done was done. And I think that is important to this story.

Mayor WILSON. Mr. Chairman, with two distinguished Senators from Mayor Schaefer's State present, and in view of the statement just articulated by Senator Mathias, I would be pleased to defer to Mayor Schaefer to lead off, sir.

Senator GORTON. I think that might be appropriate under the circumstances.

Mayor Schaefer, we are delighted to have you.

Senator Sarbanes.

Senator SARBANES. I simply want to add to what Senator Mathias said by making this point. Mayor Schaefer is now into his fourth term as our mayor, reelected last year by an overwhelming margin. The city has thrived and prospered under his leadership. And the efforts which he made to keep the Colts in Baltimore were of heroic proportions. What the mayor went through, under the most difficult of circumstances, in order to try to bring that about, I do not think any of us could have matched.

So I think his testimony here today has particular weight, without taking anything away from either of the other two very distinguished mayors who are with us, who are giving such fine leadership in their own cities. But we feel that in Mayor Schaefer we have the preeminent big city mayor in the country before this committee today.

Senator GORTON. Thank you.

Mr. Mayor.

STATEMENTS OF HON. WILLIAM DONALD SCHAEFER, MAYOR OF BALTIMORE, MD; HON. LIONEL WILSON, MAYOR OF OAKLAND, CA; AND HON. DONALD FRASER, MAYOR OF MINNEAPOLIS, MN

Mayor SCHAEFER. Thank you, Senator.

I feel like Knute Rockne going before the Notre Dame football team. I appreciate all those kind words.

Thank you for allowing me to testify today. I welcome the opportunity to testify in support of S. 2505, the Professional Sports Team Community Protection Act.

Last night I thought about what am I going to say to make any impression, to make any imprint on the Senators that I will be appearing before. And I thought about you, and I thought about the weight that you have in worrying about world situations, deficits, unemployment, jobs, South America, and I thought should I go over and talk about sports? Is it important? And the answer is yes.

I was convinced last night, and I am convinced again today, and I will tell you just one reason. I have appeared here many times. I have appeared here all alone, one Senator or one Congressman, no

reporters, no audience, on matters involving urban renewal, jobs, things that affected people, no publicity. And today there are more reporters here covering this than I have seen in years. There are fans here, Colt fans, that are here, that traveled over here to let you know what that Colt team meant to the people of the city of Baltimore.

So I feel quite comfortable in saying that it is important. And I think Senator Mathias in a way said it when he said baseball is like apple pie, and that is true.

What has happened? Today we are faced with, I think, the stability of the individual professional franchises and quite possibly the professional sports in general which is absolutely at stake. I personally feel we are out of balance, and it is in the broad public interest that Federal legislation be enacted that restores a sense of fairness, equity, and stability.

We in Baltimore and the surrounding metropolitan area have recently undergone a most unpleasant experience, to put it very mildly. A vital part of our community and our economy and our prestige was spirited away under the cover of darkness on a rainy night, on a misty night. And you know how I find out about it? I could not sleep, and I turned on the radio at 2:20 in the morning, and the reporter was saying out in Baltimore County there are 19 vans moving the Colts out of town.

Now, this is while negotiations were going on between the mayor and a representative of the Governor's office, negotiations that were still continuing that day. What did I do? I just went back to sleep. I just went to sleep. And I thought the next morning what a despicable thing to do to a city; what a terrible thing at midnight to have someone come in, go to a hotel room, direct the vans to go out there, move out all of the great memorabilia, uniforms, equipment, all out of the State of Maryland at midnight. I thought it was a pretty dirty trick. And then the individual who was the general in charge flew away, gone, and has not been back.

How do you tell the fans that all that memorabilia that we had of the proud Colts was taken by those men who really did not have any interest or care so long as they were able to move it, pick it up, and throw it in, throw it in?

Well, the fans resented it. I resented it. A vital part of our community left. The Baltimore Colts, our Colts, were removed in a disgraceful manner.

Now, our situation clearly illustrates why the passage of this bill is so vital to all cities that have sports franchises. In the recent past, Oakland was first, Baltimore was second. Another city will be third. Another city will be fourth. It is now risky for any mayor or any community to assume that they are exempt from losing their franchise no matter what the circumstances are, no matter what you do. If you decide to leave, bring 19 vans in, you wait until it rains, and then you leave.

A professional sports franchise is very different from other sorts of businesses. We take issue with those who claim that franchise moves are the prerogative of the owners exclusively and should be treated no differently than any other business.

I have trouble with that. I believe in free enterprise; I really do. Are sports different? I think they are. And I will just use a very

simple illustration because I talked to people about this. I said what is the difference? Why cannot an owner just pack up and leave? And one very wise individual said to me; the fans, the sportswriters, the TV commentators, they do not refer to Lever Bros. or General Motors as our Lever Bros. or our General Motors. When you talk about the Colts, they are our Colts—by the fans, by TV, by radio. Everybody identifies they are our team, in the city and in the region.

Teams like the Baltimore Colts, they fight for home field advantage. Other teams that used to come to Baltimore were intimidated. The madhouse on 33d Street. They tore the place apart when that team came in. Proud—whether they won or lost, we were proud.

Every community in this land with a professional sports franchise has bent over backward and made concessions. In return for this special status, owners have been expected to respect the public trust that they enjoy. We now see that this public trust must be aided and protected by a special system of controls.

I would like, if you will allow me the leeway, to give you the Baltimore story of a mayor who lived it—not read it but lived it. With your permission, I would like to use a few charts.

I hate to move the press. You know, it is difficult to miss the irony of my standing here before you today pleading for some legal remedy which will allow the Colts to return to Baltimore where they belong.

All right. Let us look at the Baltimore Colts. The Baltimore Colts, once the pride of the NFL and the Baltimore community, what were they? They were part of our community, part of our tradition, part of helping us with the renaissance of a great city, a great city that was once known as a little place north of Washington that you went around. They never came to Baltimore.

The roots sunk deeply, giving something back. And, you know, I am honored when I shake hands with a Senator, when I shake hands with a member of the House of Representatives. I get a thrill when I shake hands with Unitas. There he is.

No cheers.

With Matte—with Unitas I watched him come off the field with the blood streaming down his face, a cut almost from ear to ear. They sewed him up on the field, and they put him back in, and he won the game. And that was part of that tradition of the Baltimore Colts, our Colts.

Lydell Mitchell, Jim Parker, Lenny Moore. There is no question who helped make this NFL a successful franchise. In the early days it was the Baltimore Colts that helped make the NFL a successful football league.

On December 28, 1958, the Colts beat the Giants in a sudden death championship game. Even youngsters who were not born know of that game. I was there. I watched a guy by the name of Marchetti carried off the field with a busted leg laying on there watching. Never such a thrill as that.

A record of excellence on the field. This is the Colts. Super Bowl championships, two world championships, seven conference championships, and a community and a franchise which symbolizes the

best in NFL football. They were a class team on the field. They were winners on and off the field, and they were heroes to all of us.

What does a team mean to a city, a city that supports it, a city that puts something in—not takes out, puts something in. A valuable professional football franchise inserts economic vitality into an area.

OK. The Colts were a vital economic resource. Experts agree that the presence of the Colts generated between \$25 to \$30 million in economic activity, not only to the city, to the region, but also to the State. And there is a man by the name of Secretary DeFrancis who verified this—\$25 to \$30 million. Each game brought employment to specific groups, including the young, the very young, the retired, the unskilled, those on social security who needed this extra money to help them survive.

What does it do to a city? Their loss leaves an economic void in our hotels, our restaurants. And I can just tell you that during the strike; out in our community, when a football or a baseball team was on strike, the proceeds in restaurants went down. There is a direct relationship of loss of patronage and harm to the community. Suppliers and concessions, and that intangible but important factor that contributes to local and metropolitan economic development efforts, and of course taxes, the supply we gain by taxes. It is the equivalent, quite frankly, of losing a major industry, and that is one of the problems that we have.

The question is, we go through this bidding process all of the time pitting one city against another. And I read—oh, I have read everything that came out of other cities, and I think the thing that made me the maddest was when someone said we will treat you or your Colts better than you did. We will treat your Colts better than you did.

Never criticize the mayor of another city. It was not the mayor who said that. But it just rubs salt. No one will ever treat the Colts better than Baltimore. And they say sometimes Baltimore is not a good sports town; you do not have anybody supporting your teams.

We have an indoor soccer team called the Blast. The experience record to date included 16 sellouts of 20 games, 16 sellouts. That brings people down to the center of the city, along with other activity. Sixteen sellouts.

The Orioles, world champions, a dozen years they hovered around a million, and last year over 2,026,000 people, and this year the goal is 2,300,000, and we will get it.

Now, what is the secret? Why all of a sudden the Blast? Why all of a sudden the Orioles? Here is their secret: Stability, players rooted in our community like Unitas and Matte and the other players who became and were known on the streets even more so than the mayor walking around.

I used to walk down the street. Brooks Robinson or Unitas would be beside me. Kids would run over. I would stick out my hand. And away from me, right over to those guys.

It made a big difference. And you do not think that is an ego trip, I will tell you.

Stability, an out-of-towner who cares about Baltimore, consistent and strong management, consistent and strong management. It is a great football town; 51 consecutive sellouts between 1964 and 1970,

averaged over 56,000 per game as recently as 1978, and even—and I will get to this in a moment—in all of the turmoil that we had, they still averaged over 41,000 people last season, 41,000 people last season, with that instability and worrying about whether the team was going to be there or was not going to be there.

OK. What happened to the football franchise between 1973 and 1984? A trail of instability, a trail of uncertainty, a trail of alienation, frustration—frustration. The Senator said patience. The Senator said patience. There is another word—frustration. Indecision, loss of State and Federal aid that we continually have from the State. It is lost.

So then what do we do? Now, I will tell you a little bit about the history of what happened. Here is what happened to the Colts since 1973. And, again, I was there during that time.

November 1973, "We have no idea of moving the franchise. Please tell the people that. That's not even in our minds." That is the Colts owner.

1976, Phoenix interested. Visit Colts owner in Chicago and make attractive offer. We are starting to worry just a little bit.

1977, Colts owner meets with Indianapolis officials. Just a little nervous.

1979, Colts owner visits Los Angeles. Meets with Coliseum Commission.

February 1979, "The Bears never had such enthusiastic support as you give the Colts." That was the Colts owner.

In 1979, Colts owner welcomed by 45,000 fans in the Gator Bowl in Jacksonville, Fla.

September 1979, Colts owner says he expects written offers from Memphis and Los Angeles. We are getting just a little bit nervous.

While we are negotiating the 15-year lease and \$22 million that the State was to give us in 1979, "We want to stay here and bring Baltimore and Maryland a championship like we have in the past." That was the Colts owner.

1981, "We are the Baltimore Colts. We want to stay here, and we want to give you the kind of team you can be proud of again."

Colts owner in letter to season ticketholders in January of 1982, "We are staying in Baltimore."

December 1983, Colts owner meets with New York City officials about moving to Shea Stadium.

January 1984, Governor of Arizona reveals that Colts owner canceled scheduled meeting in Arizona. "I have no intention to move the blank-blank team." Colts owner.

February and March 1984, "Colts owner entertains several rounds of bidding between Baltimore, Phoenix and Indianapolis.

March 28 and 29, the Colts complex is emptied. Moving vans head for Indianapolis.

During February and March extensive negotiations are going on between the mayor and Mr. DeFrancis representing the Governor. We are matching everything that anybody else matches, and more, and more.

Let me just say a word before I get to this instability. We went to Annapolis a number of years ago. We said to the people in Annapolis we need some money to fix the stadium, and they said all

right, how much? Twenty-two million dollars. How many years? Fifteen years.

The Colts coach and general manager testified in support of the legislation. The Colts manager, general manager and coach testified in favor of the legislation; \$21 million, 15 years. That was not enough. They did not want it for 15 years. So we go back to the legislature for \$15 million for 6 years. Reduce it. There will not be any problems. No guarantee by any team. Just to be paid for by the city of Baltimore. The city was to pay it.

And what happened to the great, proud franchise of the Baltimore Colts. Six coaches in 12 years. The team salary structure drops to the lowest. Unceremonious dropping of links to a glorious past by getting rid of Unitas, Matte and all of the links to the past, all gone. Very few, if any, of the new players encouraged to live in the area, like Matte and Unitas who do live here now, and Parker, and Lydell Mitchell, and Lenny Moore, because they said you are to become part of the community. And that is what the Orioles are right now, part of the community. The Blast players out every week, part of the community. Colts players, I would not know more than three of the players if they came in now. Barry Krauss I would know. Darrell Hatchett I would know because on their own they started talking about working with the community.

Discouraged players from community activity. We said send the players out. Let them become known in the community. That was discouraged.

Six consecutive seasons below .500, including one season without a victory. And yet, still over 41,000 fans last year there. And impossible lease negotiations, impossible to be able to do it.

One of the things we always hear, well, mayor, you never put up any money. You never did anything out there. You just let it go to pot. It is an old stadium. And I resent that. I resent it. It is not a domed stadium. It is a stadium that is more than adequate, because we put our money into accommodating the fans, not accommodating particularly the owner with a special sky box. But what we tried to do, how do we make it comfortable for the fans.

We invested \$1,300,000 annually during each of the past 6 years, \$1 million by the State and \$300,000 by the city, plus police, fire, sanitation, all the other things that are inherent in a city helping a franchise or helping any business.

There is no parking out there. We then took over another lot, added 1,200 new parking spaces. The owner of the Colts said to me I want the time changed. A very touchy political situation. We went to the legislature. First we went to the community and then we went down to the legislature and worked it out and got it back to where he wanted it.

Twenty-two million dollars in improvements approved by the State untapped because we could not get a lease signed. We reduced that. Right now there are \$7,500,000 in improvements for either the football team and also the baseball team, another \$7,500,000 for a commitment of 6 years, and the same lease for the baseball. No guarantee. No guarantee by the owners to pay anything. The city and the State pays it all—the commitment to city operations at the stadium, groundskeepers and so forth, and to continue improvements to benefit the fans.

You know, one of the great things is the improvements should benefit fans, and that was our emphasis—in lavatories, concessions, seats and the rest.

I think this is our last chart. We ask you to pass this. We ask you to help us, not 2 years from now but now.

Here is what we can do. Are we ready to buy the team? Yes, we are. Two groups that will buy the team. And I personally asked the owner do you want to sell? The answer was no. All right. We are ready.

The local and State governments are ready. I have the commitment from Mr. DeFrancis, from the Governor as of last night in any way he can help. The fans who sat through the policy of players coming in and off the field, coaches going on and off the field, the fans are still ready to support a good team or any team.

And spare other communities what we have suffered. Any city can have a franchise removed at any time, and it is now time to restore the balance and help avoid this jumping all over the place of franchises.

So we ask you to pass the Professional Sports Team Community Protection Act. We are not asking for anything except one thing. We never stopped supporting that team, never. The city government was committed. And you should now allow them to just say I happen to like Indianapolis because the mayor wears a green tie. That should not be the criterion.

Have we supported the team as fans? I do not want the team there if we do not fix the stadium. We have a commitment. We want the team there. If the fans do not support it, it is not right. But if they do, it is a little different than a General Motors, a special type of interest. That is why we say we need this.

And, you know, during all of this I had the business community agree to buy 49 percent of the franchise, 49 percent. That is not control. But they would have purchased 49 percent because they knew how important it was to keep this team in our city.

And so this is some special legislation. It is time. It is needed to aid the stability of all sports franchises in the United States. And we hope that you will act on it very rapidly.

Senator GORTON. Thank you, Mr. Mayor.

Mayor Wilson.

Mayor WILSON. Mr. Chairman and members of the committee and other distinguished legislators, that is a tough act to follow. Little did I know when I deferred to the good mayor what I was doing, but now I do, and I must congratulate him on an outstanding presentation, much of which could be adopted by me in terms of my presentation.

Mr. Chairman, if I may, I will ask that my written statement be admitted in evidence for the record, and I will just simply make a few points, some of which have been alluded to but I think need amplification.

Senator GORTON. Your statement will be so included in the record.

Mayor WILSON. Thank you.

One of the things that is often overlooked as people talk about whether or not a sports team should be permitted to move, and you hear people saying things like well, why should not Al Davis be

able to take his team and take it where he wants and move it wherever he would like to move the team?

I submit to you, gentlemen, that that is an oversimplification of the question, and it does not really set out the issue. I submit to you that Al Davis could move the Oakland Raiders, and he could move them anywhere he wanted to; that it would be unimportant. There is no way the Raiders would have any importance if they were playing somewhere in a small town in Alaska. It is the league that provides the base, and it is a question whether or not people come out to see national football, National League football.

They do not come out in those droves of some hundreds of thousands of people to see semi-pro football. They come out to see NFL football. I think that is often overlooked in the question of moving and moving a team is discussed.

There is no question in my mind but what the clear issue as to whether or not a league should not have the right to make reasonable rules to control movement, since it is the league which makes football. None of our cities would want some team that was not in the league, small teams that were not in the league. It is NFL football which makes football.

And I must say also in passing that having participated before the U.S. Senate Judiciary Committee and the House of Representatives Judiciary Committee when those hearings went on with regard to the professional sports league, that this is an issue that is going to be with us until the Congress acts and until the Congress decides to do something about it.

That I will recall there has been discussion here of retroactivity. I believe that that term has been used a number of times by the distinguished Senators here. In terms of the issue of retroactivity, I recall when testifying before the U.S. Senate Judiciary Committee that there was discussion there.

I believe that the distinguished Senator Heflin will recall that Senator Thurmond asked Al Davis whether or not he and the Raiders were involved in a move which was going on at that time in the California Legislature seeking the passage of legislation which would appear to have—which was intended to nullify Oakland's eminent domain action which has been in the courts for 4 years. And Mr. Davis specifically in response to Senator Thurmond's question said oh, no, we have—in no way are we involved in that, and we would not support that kind of a movement.

Yet today, today in that very same State legislature it is very clear that the Raiders are involved in lobbying for a new bill, S.B. 1585 by Senator Montoya of southern California, which would have that very effect.

I would like to refer to the congressional portion of the Congressional Record wherein Senator Heflin stated on December 20, 1982.

I was heartened that Mr. Al Davis in his testimony before the Senate Judiciary Committee stated that the Raiders have no involvement in that activity to overturn the eminent domain law through State legislation, that he did not condone it, and he would attempt to have others working for such State legislation cease their activities in Sacramento.

Yet it is clear today—and I brought with me an article that appeared in yesterday's Tribune discussing a meeting which had taken place 2 days ago before the Senate Local Government Com-

mittee of the State of California, and in the course of which the reporter states, "The Montoya bill was being supported by Richard Oakley, a Sacramento lobbyist who says he worked for the Los Angeles Raiders." In addition to that, other Raider players were seen in Sacramento at the same time that the lobbying was going on for the passage of this bill.

So I think one of the Senators used the term "perfidy." Now, it seems to me this is a classic example of it. And when this was going on 2 years ago, the discussions around the national legislation at that time, it was Oakland and now it is Baltimore that has been pointed out, and now there is talk of Minnesota and my hometown of New Orleans. There are rumors about what potential movement the Saints out of New Orleans. And it seems to me that somewhere the buck has to stop, and it seems to me that that is in the U.S. Congress is the place where it must stop.

And I want to congratulate also the NFL in terms of the integrity that it has shown and around this issue of retroactivity. I think there is reason to believe that Mr. Rozelle and the NFL might have had an opportunity to get a bill passed 2 years ago if they had been willing to eliminate any retroactivity and let Oakland go down the tubes, and they refused to do it. And I think that this is—to me reflects the highest kind of integrity.

I would like to point out that in my city that for 12 consecutive years the Raiders games were sold out, including exhibition games; that in 1979, a year before Mr. Davis announced that he was moving from Oakland to Los Angeles, that the Oakland Raiders had the third highest gate receipts in the National Football League. In 1978 and 1979 the average Raider's earnings were \$2 million.

There is another point. There has been reference here to the players union opposition to this bill. I do not quite understand it. I do not believe that there is any credible evidence of a rational basis for opposition by the players union. However, it ought to be noted that the head of the players union is Mr. Gene Upshaw, who was not only a former Raider but was very close to Mr. Al Davis. He has testified in the Federal case, and it seems to me that there is a reasonable inference that in terms of the position of the players union, that Mr. Upshaw must have had some influence.

Now, in terms of the Sacramento legislation on this issue of retroactivity, the players union is not going to be affected by this issue of retroactivity. If the players union is concerned—if the players union is concerned, it seems to me that they ought to show some rational basis for it if their position is going to be given any weight.

In the city of Oakland, we are not a huge city, we are not a big city. We are not one of the big, great cities of the United States. We are a city of about 350,000 people. But it is a community surrounded by many smaller communities and wherein the Raiders brought a great deal to the city in terms not only of the economics, but in terms of the morale of the city and what it meant to the fans. And you have heard a great deal of testimony with regard to that.

I heard testimony here today about the flight in the night of the Baltimore Colts. We went through substantially the same; however,

we were a little luckier. We caught them before the vans were loaded, and we were able to serve them with the necessary papers in our litigation, so we were able to get a restraining order at the time. But it did not really mean anything to Mr. Davis. He simply ignored the restraining order and let the vans go on.

I believe that there is a place in any legislation, and it ought to be written in a way that would protect cities, such as Senator Lautenberg referred to, and I think there is a way to do that.

There are people who express concern also, for instance, in terms of our eminent domain action with regard to the broad potential ramifications of it. But I would submit that in terms of eminent domain that, yes, we brought an action in eminent domain as to the Raiders, but it was under different circumstances. There were special and unique circumstances.

We have a basketball team, the Warriors, and everybody in sight is talking to the owner of the Warriors about the possible movement of the Warriors. But I would not be in a position to defend that, because the Warriors have not been given the same kind of support that the Raiders were given.

Furthermore, our stadium was not—the indoor facility in which the Warriors played belongs to the city and county also, but that was not built for the Warriors. However, our football stadium was built for the Raiders. And that was demonstrated, I think, in a very dramatic way during the course of our eminent domain trial when, on a recess, I felt someone pulling on the back of my coat, and I turned around, and there was a little man who had driven almost 150 miles, and in his hand he had a program from 1965, and on the cover of it it showed the stadium about two-thirds of the way completed. This was a program put together by the Raiders themselves, and the face of the program stated that this stadium, this Oakland Coliseum stadium was being built for the Raiders. So there is no denying that this stadium was built for the Raiders.

The city and county paid jointly \$1½ million a year on the bond, and we will be paying until the year 2004, half by the city and half by the county, before this stadium is paid off. So the taxpayers provided the stadium and provided it as a place for the Raiders to play. So we do not have the same set of circumstances. Their fears as to the eminent domain would not apply as to the Warriors. We could not establish a case if we are interested—and we are not—with regard to the Warriors of the NBA, because it is not that broad. But there are specific circumstances which clearly, as has been indicated by our California Supreme Court, which places us within the jurisdiction of that law.

And yet, I had heard that the players, some of the players union representatives have suggested that one of the rationale for their opposition to this bill is that the Raiders ought to be permitted to settle their case in the courts. Well, that is precisely what we are doing. We are attempting to settle it in the courts, and yet, the Raiders are not satisfied with that. They are in Sacramento lobbying and conspiring with legislators to try to get a bill designed which is specifically aimed at the city of Oakland.

So they cannot have it both ways. It is just an untenable position. And so I submit to you that very little weight should be given to that position.

Further, with regard to eminent domain, we did not just jump out and file an eminent domain action. We learned in early 1980 during the discussions with Mr. Davis that in early 1979 he had been carrying on negotiations with people in Los Angeles around the coliseum there, and it was a last resort. We had utilized everything that was available to us by way of resources in terms of negotiation before we filed that eminent domain action. And so it was not something that we precipitously jumped out or jumped into and filed.

It is true that we believe the Raiders are very important to our city and for many reasons, but we do not think it is just the city of Oakland. We believe, without a doubt, that this is going to have an impact throughout these United States in terms of many of the cities where the taxpayers have been placed under the burden of paying for stadiums and stadiums that are going to no longer be occupied.

I would like to recall with you a discussion that I had in one of the discussions with Mr. Al Davis when I asked him about our stadium, and I said would you like to see the stadium expanded in size, and if so, by how many people and how many seats? And he said oh, I am not really interested in expanding the size of that stadium. He said oh, if you want to add a couple of thousand, that would be all right. But he went on to say that when pay television really arrives, the day of the big stadiums are going to be over, and that this is where it is. And there is not question but what this was the purpose of the move.

You might ask why would the Raiders want to move from Oakland since it appears that they were supported as well as they were, and that is the answer. The Los Angeles area, as he pointed out in that conversation, would be the second largest pay television area in the country. And that was the purpose of the move—not because they were not supported, not because it was not economical to stay in Oakland, but simply because he envisioned an opportunity to get into what he says will be the second largest television market under pay television. And also, he clearly believes that he will be able to take the league on and retain whatever funds come by way of pay television rather than sharing them as television is shared today.

I, along with other mayors, applaud this bill. I believe that it makes a lot of sense and is a fair bill; it is a reasonable bill; it is rational, and it is one that I would hope that the Senate would be able to support.

Thank you.

[The statement follows:]

STATEMENT OF HON. LIONEL WILSON, MAYOR, OAKLAND, CA

Mr. Chairman: Thank you for giving me this opportunity to voice my support of S. 2505. My remarks will not be substantially different from those I made before the Judiciary Committee of the House of Representatives one and one-half years ago. Those remarks were in support of H.R. 6467, the Major League Sports Community Protection Act. Quite frankly, my city feels that the failure of Congress to prevent indiscriminate and unwarranted transfers of major league sports franchises from one community to another is contrary to the interests of sports communities, sports fans, and the entire nation.

After 22 years in Oakland, and 12 years of sold-out attendance in the 54,000-seat Oakland-Alameda County Coliseum stadium with ticket prices among the highest in the NFL, the Oakland Raiders threatened to move to Los Angeles in 1980. The original Raiders' lease in Oakland was for five years with five three-year renewal options given to the Raiders. Because of uncertainties with respect to the survival of the old American Football League, and the owners' fear that major league football might not be successful in Oakland, this lease was the best that could be negotiated by the Coliseum back in the early 1960's. On the strength of that lease the taxpayers of Oakland and Alameda county provided a facility now worth more than \$75 million. The City and County are now \$30 million "in the hole" as a result of Coliseum operations, and will continue to pay \$1,500,000 per year until the year 2004 in order to retire the construction bond obligation.

Late in 1979 it became apparent that the Raiders might not exercise their option to renew their lease. What was not known was that the Raiders had been secretly negotiating with Los Angeles representatives while they were stonewalling efforts to enter meaningful negotiations in Oakland. Without knowing the precise nature of the proposed offer from Los Angeles, the Coliseum was able to develop, with City and County approval, an offer to the Raiders. This offer dated February 4, 1980, was estimated to be the second or third best financial package in the NFL. This offer when presented to the Raiders, was literally thrown back out in the Raiders' headquarters parking lot without having been opened or read.

On February 22, 1980, the City took the extraordinary step of seeking to purchase the Raiders franchise for full fair market value, by exercise of the City's right of eminent domain. This effort has been time-consuming and expensive. After 4 years of litigation a final ruling has not yet been obtained from the California courts. At the conclusion of a 7-week trial in 1983, the Raiders filed a claim against the City for costs and attorneys' fees in excess of \$2,500,000.

Why has the City pursued this eminent domain action? The public recreation and attendant social and economic benefits to Oakland resulting from the NFL franchise are enormous. Estimates of the economic activity generated by the Raiders range from \$30 million to \$180 million per year. The Raiders have been an important part of the soul of our community. As in other sports communities, our team has been a unifying force, a source of pride, and a symbol of the spirit of a community that is working overtime to realize its full potential.

If a professional sports franchise is not financially supported or wanted by its community, it should be allowed to move to a community which does want and will support it. The team and the nation will benefit. But neither the nation nor professional sports benefit from moves motivated solely by private greed, particularly when the move is made in violation of rules established by the particular sports league. After all, it is only because the franchise is part of a league that it has value at all.

S. 2505 would result in a rational accommodation of the interests of franchise owners, fans, communities, sports leagues, and the national interest. It would provide one particularly valuable element: time. Communities and governments need time to develop financial packages and make considered judgments with respect to the enormous costs involved in attracting and maintaining major league sports franchises. The helter skelter negotiations involved in the Oakland Raiders and Baltimore Colts cases demonstrate the value of requiring a period of time within which offers can be evaluated and proposals made.

Something must be done about the present problem. Senate Bill 2505 provides a workable solution. If Congress does not take some appropriate action, professional sports teams will continue to be able to move indiscriminately, leaving behind outraged communities and a generally bad taste in the mouths of loyal professional sports fans.

Senator GORTON. Thank you very much.

Mayor Fraser.

Mayor FRASER. Thank you, Mr. Chairman.

I appreciate the opportunity to appear and I appreciate the interest and support of the chairman and the other Members of the Senate who have taken a strong interest in this problem.

I am going to be brief because I can endorse all of the statements that have been made this morning. Let me simply restate the factual circumstances facing the Twin Cities.

We are a metropolitan area of 2 million. We have a major league baseball team, the Twins. We recently built a \$55 million domed

stadium to house both the Twins and the Vikings. Now the owners of the Twins want to sell. They are receiving offers from both Tampa, FL, and from people from within our community. They may be getting offers elsewhere as well.

Under their agreement with the Stadium Commission, they are not bound to stay with the lease if attendance falls under 1,400,000 a year for any 3-year average. In 1982 the attendance was 921,000 and in 1983, 859,000, so attendance in the last 2 years so far has fallen under the necessary average.

The business community in our area is concerned, and a task force has been hard at work to improve attendance. They are not likely to reach the additional patronage this year to bring the 3-year average up to the figure specified in the lease. But the attendance this year is up significantly.

One frustration that we face is that the better that we do as a community in responding to this problem, the more value the owner may attach to the franchise. One of the strange circumstances that the committee may well wish to ponder is the fact that the value of a franchise seems to exist almost independent of the quality of the management. That is not true of most private enterprises. It is one of the circumstances that may distinguish this from the normal business enterprise.

In the Twin Cities we pride ourselves on partnerships. This has been a very strong part of the way in which our community has worked. We have built partnerships between city hall, the neighborhoods, and business. The sports team is a unique kind of partnership. The Government builds a stadium to house the team. Business, in general, offers support to the franchise owner. Community support and loyalty are created to benefit the franchise owner. These are three components already at work to help the franchise owner.

Now the question is what are the franchise owners giving back in return? Of course they want to make money, and we do not complain about that. I think the franchise owners are entitled to make money. But some reciprocal contribution to what is now a four-way partnership is also needed.

If we should lose our franchise, we will be hurt in three ways. The economic loss we estimate at \$22 million per year based on last year's experience. With our increasing audience, we think in the next couple of years that would be closer to \$30 or \$40 million a year. We estimate a loss of 1,000 jobs, the kind of jobs that we very badly need in our city. We would lose the revenue to support our new domed stadium, as well as losing its use. Also—and this is a very critical issue—there would be a rupturing of the bonding that goes on between the community and the team. From the public point of view, the loss of access to baseball games would be most serious. There are thousands of Minnesotans who value that form of entertainment.

The seriousness of our concern is illustrated by this thick volume. This is the report completed for the task force that is working to hold our franchise. It is a comprehensive look at the problems of marketing major league baseball. We think we have strategies that will work, but they are not the kind of strategies

that will produce a commitment by the owner to stay in the city in the coming year.

I am not speaking today to any specific bill because our city has not taken a formal position, but I do speak for the need for responsibility and accountability to be exercised on behalf of all of the parties. Please do not trivialize the concerns of a community which will be affected by the prospect of loss of a major league franchise.

Thank you very much, Mr. Chairman.

Senator GORTON. Thank you, Mayor Fraser. And thanks to each of you mayors. I do have a few questions, and we may submit some more in writing after questions from other members of the committee.

Mayor Wilson, how long do you think it is going to take to get a final ruling on that eminent domain proceeding? When will that litigation terminate?

Mayor WILSON. Well, Mr. Chairman, it is difficult to answer that question, because what has happened recently is that the court of appeals reversed the trial judge on all five points used by the judge in rendering a decision against us and sent it back to the judge with instructions: one, that he could not consider any one of those five points; two, that he could not take any further eminence; and three, that he was simply to clear up a number of dangling issues which even the judge did not consider of any significance, and he did not deal with them in his decision.

So it depends upon what the judge does now with this case. And we, although we are in the regular appeal channels, this action was pursuant to a petition for an alternative writ, a mandate or prohibition.

Senator GORTON. So you are a long way.

Mayor WILSON. We may be, yes. However, we feel that there is a chance that we may be able to have the Raiders back this fall. It depends entirely on what the judge does and how he deals with these dangling issues.

And I was interested in an observation made by Senator Lautenberg with which I certainly—I strongly concur, and that was on public use and public purpose. And that is the only issue of any consequence that was among the dangling issues. And although we felt that that had also been dealt with, the court of appeals did not agree with us. They felt that it was so poorly written that they felt that it was not really dealt with.

But we feel that there is a chance we may be able to go back to the court in terms of an appeal from the determination that the judge will make. We have had the hearings moved up. He had set a date in June, and we made a motion, and he granted it and moved the hearings up to May 25.

Senator GORTON. Thank you.

Mayor Schaefer, what role did the NFL play in the events of the last 6 months or a year? Was it a nonplayer, or did you have extensive negotiations with the league?

Mayor SCHAEFER. I met with the Governor and Mr. Rozelle maybe on four or five occasions 2 or 3 years ago during this time that the team may go, it may stay, improvements and so forth. Mr. Rozelle was very interested in what we were attempting to do to

satisfy the then-owner or the owner: whether we were going to improve the stadium, whether the loan was going to get through.

I met with Mr. Rozelle and went up to New York to see him about 3 weeks ago and gave him a complete history of what we had done and what we were doing, what the Governor was doing. About 2 weeks ago Mr. Rozelle came down and met with the Governor and myself at the Governor's mansion. Mr. Rozelle I think was very sympathetic to our cause, but he did say that there was pending litigation, and until the litigation was over, the league could take no further action.

I respected that. They have a \$49 million judgment over their head. But my own personal feeling, that the league was very sympathetic to the way we were being treated, that we were not being treated fairly. I do not want to put words in his mouth, but that is an impression that I got.

Senator GORTON. Mayor Frazer, could your testimony be summarized by the proposition that you feel a great deal of frustration that all of the things that are proposed in that book could come true; that you could have a successful franchise there but still lose the team given the nature of the business; that no matter how successfully you could provide support for it—

Mayor FRAZER. That is exactly right, Mr. Chairman. We have got a very concerned community which is working hard on this issue. The catchup is probably beyond our reach this year, but we are now providing the kind of a market that normally any franchise owner would like to work in.

There are reasons, I think, why the patronage has been down in the last few years. I do not want to go into those here. Now, however, there is an effort being made now to improve the situation.

In spite of our best efforts, we may suddenly wake up one day and read the paper or wake up at 2:00 a.m. in the morning and turn on the radio and find that we no longer have major league baseball in our Twin Cities.

Senator GORTON. Thank you.

Senator Long.

Senator LONG. I would like to ask you Mayors—and I guess I could start with you, Mayor Schaefer—if we can work this out for you, if your people could find some way to see to it that the ordinary guy would have a chance to go sit in that stadium and see the team play.

Now, you do not need to go beyond Washington, DC to acquaint yourself with the problem. When you have got a winning ball team, all the season tickets are sold, and the average guy cannot go; so he tunes in on television, and he would like to try to go out there at least once during the season and sit in the stadium and cheer for his team. And I think that that is how it would be again when you have a winning team.

It seems to me there ought to be a way that you could help work that out. For example, I know in New Orleans I have eight season tickets. I practically never go because I am up here all the time doing my job. But if the ordinary citizens wants to go out there, he has to know somebody. Otherwise, he is just not going to be able to get a ticket.

If you people would set up some kind of facility where someone, just an ordinary guy who would like to go see the football team play, could send his money in, and when his turn came, he could go out and take his wife and children to see a ballgame, I think that he would feel a lot more enthusiastic about it than he does when he is backing the team in the way he can but he cannot go see them. The only way he can see them is to see them on television.

Why couldn't you people set up some kind of facility where people could make their tickets available, and you would not have to pay scalper's prices; you could pay the ordinary price and go see the team play? I am sure there must be a lot of people like me who would be glad to make their tickets available when they cannot go themselves.

MAYOR SCHAEFER. I will answer from our standpoint. We have had great support from the Colt Corral, and they have had—the ordinary fan has had an opportunity to go to see our team.

SENATOR LONG. Do you have something like that where they do not have to have a season ticket?

MAYOR SCHAEFER. They do not have to have a season ticket.

SENATOR, I am put in a bad spot. For instance, if an owner says to you OK, Mayor, guarantee me 56,000 fans each game, each game, that puts you in a little tight spot on trying to make sure those tickets are sold for each game. If you guarantee—and I could never do that—but if you could guarantee a reasonable amount, say 40,000 season tickets, which would still give you 16,000 or 18,000 additional seats—and I am talking about some good seats—you could get the average fan out there. I do not think during the great days of the Colts they were all corporate fans. I think they were the ordinary, everyday sports fan from Baltimore that was there.

And I do not think there is any difficulty in doing that. But, you know, you are put in an awful position. The owner says I want this done, so you say all right. I want this done. All right. I want this done. OK. Now guarantee me 56,000 fans each game, and if you do not, you pay for it.

Now, that puts it mighty rough.

SENATOR LONG. Mr. Mayor, I am not concerned about the owner. I am concerned about the ordinary guy who cannot go see the team in the stadium. He would like to go out there at least one time and cheer for the team and feel like he is part of it.

MAYOR SCHAEFER. Senator, you pass this legislation, and I will guarantee you that ordinary fans get there.

MAYOR WILSON. Senator, I would like to attempt to respond to your question also, and I appreciate what you are suggesting.

We do have several corporations which buy a number of season tickets, and these are really community-minded corporations. And what they do with those tickets is they distribute them throughout different segments of the community. For instance, one corporation has adopted a high school in the community, and they do many things, and included among the things they do is distribute some of their tickets among the high school students, and two other corporations have done the same thing.

Also, for some of us, just as you have indicated, yes. For instance, the Oakland A's baseball team—and I am provided with 10 season tickets, so what I have done is I have set up—on an organized basis

I send those tickets out throughout the flatland schools, distributing them from one school to another, and tie in those students who are trying to—who must show that they are getting decent grades, and tie it in with the educational process.

And I think that there is a way to provide that, in spite of the fact that, for instance, we had, as you heard with the Raiders, 12 years of consecutive sellouts of all games. But there is something else in addition to being there at a game. I think what happened is, and one of the reasons the Raiders have such great followings in Oakland and East Bay is because under the league rules, with all of those—each game that was sold out, all of those home games could be and were televised locally throughout the Bay Area.

And that is why, for instance, when the Raiders were getting ready to leave, I was getting letters from all over the area because the sick, the lame—I went to an art show one night, and there was not anyone in the room I think under 65, and some of those old ladies could hardly walk. And yet the only question they wanted to ask me was are you going to get our Raiders back for us.

So I think that many people are able to develop a relationship with a team watching it on television. My mother is now 92, and when they were—before they left, for years she never missed a game, watching it at home, watching them at home on television also.

Senator LONG. I am just saying that it happens all the time. It has happened to me many times. And I am 65 years old, and I have had this thing happen many times in life. I would have a whole lot of tickets. I had more than I needed. People I expected to have as guests did not show up, so I am left with the tickets. And so what do you do with them? I mean there is no better way to do it. Many times I just gave them to a bellboy to go out and see what he could do with them, and of course, that winds up in the hands of scalpers, I suppose.

We have had some allegations, and I suspect there is something to it, about money made even by owners with regard to scalping tickets. I do not know whether it is true or not. I am not trying to prove it. But I am just saying that I would think that you Mayors would help to work out some system where when people have some tickets they are not going to use, they could be made available in an orderly fashion, and then when somebody wants to go, he is not stuck with somebody who is selling him a ticket at scalper's prices, and then he finds out it is a forgery and not even good for a seat. The poor soul can receive a ticket from a responsible source and know that that ticket will get him a seat, himself and his wife and children, and go see a ballgame.

I do not know why you people cannot help work that out. I mean you are asking us to pass an act of Congress that will be controversial as far as some people are concerned. I am just saying why can you not do a little something on your own side in the public interest now to try to see to it that the majority of your own citizens who cannot go see the ballgame would get a chance to go?

Mayor WILSON. Your position is well taken. We are doing some of that, and we could do more and will, I assure you.

Mayor SCHAEFER. We give them to senior citizens. We go to the—they are given to high schools. They are given to the community.

For instance, each one of our communities are given at least six tickets.

Senator LONG. Do any of you have any kind of organized arrangement whereby somebody who is not going to be using the ticket can turn it in for whatever it might bring, and that where you can sell it back to someone who would like to go the game, where people can call in and say look, I would like to be put on a list?

Mayor SCHAEFER. Senator, we do have. We have that. We do it in Baltimore City and Baltimore County. And not only in football but in baseball, for the Mechanic Theater, all of those things. We actually have places where senior citizens, in particular, can get a ticket at a discount price or get a ticket.

Senator LONG. How about just ordinary citizens?

Mayor SCHAEFER. They are ordinary citizens.

Senator LONG. I did not say senior citizens were not ordinary citizens.

I am saying how about a guy who is not a senior citizen; do you have that?

Mayor SCHAEFER. Not exactly in the way you are saying.

Senator LONG. I am trying to talk about share the wealth, let everybody in on the deal.

Mayor SCHAEFER. I can turn them over to the Colt Corral, and he can get them to people that need them. Just give him a ticket a day ahead of time, and we can get rid of it.

Senator LONG. Do you have some similar arrangement, Mayor Wilson?

Mayor WILSON. We work through the corporations with a program to provide the ordinary citizen with the tickets that—some of the tickets that they have purchased and do not use.

Senator LONG. Do you have any kind of arrangement by the city government or someone associated with the city government to see to it that just anybody can call in?

Mayor WILSON. Only in my office. In my office we do. We have just what you are talking about. Anyone can call in and ask for the tickets that are unused, and we provide them with those tickets at no cost.

Senator LONG. Do you have any kind of arrangement, Mayor Fraser?

Mayor FRASER. Senator, there are a number of strategies aimed right at that question in this book that we are looking at. Of course, with regard to baseball, it is a lot easier and a lot less expensive to get into the games. There is plenty of room at the moment.

Senator LONG. Do you have some kind of arrangement of your people where people do not have to pay scalper's prices to get a ticket if someone has tickets that they are willing to make available?

Mayor FRASER. That would be more applicable to the Vikings, to the football team. At the moment our problem is not there but with the baseball team. But I recognize the merit of your question. I cannot answer it fully at this point, but I would be glad to provide you with that information.

Senator LONG. Thank you.

Senator GORTON. Senator Lautenberg must leave for an engagement and wanted to make one statement out of turn.

Senator LAUTENBERG. I thank the chairman and my colleagues for their indulgence. I would like to say to all of you Mayors, I respectfully acknowledge your commitment to your communities. It is inspiring to see. And I recognize that the sports team is a critical part of the community in so many ways. We have seen it in New Jersey.

The one thing that I would like to ask the Mayor of Baltimore, is this, Mayor Schaefer: the Redskins are just a short ride down the road from Baltimore. You can get them on TV. You see them in the local papers. Does that satisfy Baltimore's need for a team or a rallying point or community focus?

Mayor SCHAEFER. No, sir.

Senator LAUTENBERG. New Jersey also felt the same way when it had to go across the rivers to New York and Philadelphia in the south to see a team. It was not our team. I think this is very important legislation. But some modifications have to be made so we do not continue to deprive newly developing areas, areas where there are an abundance of fans and an abundance of interest that would require and support a franchise.

And I was pulling your leg a little bit. I do not believe that the move that was made ought to have been made.

But I do hope that we will keep in mind there are communities that need teams that need the same kind of focus for civic pride, and maybe it ought to come through some kind of expansion policy or some revision of the antitrust exemptions so that these matters can be dealt with more equitably.

And I thank you, Mr. Chairman. These have been wonderful witnesses, and it is nice to see these people on the firing line that feel so strongly about their views.

Senator GORTON. Senator Kasten.

Senator KASTEN. Thank you, Mr. Chairman.

I have no questions at this time.

Senator GORTON. Senator Heflin.

Senator HEFLIN. Well, I might say this. After Senator Long's questioning, if the Democratic Convention becomes deadlocked, I can see the motto, "Long for President. Share the football wealth. Every man a king."

Mayor Wilson, in your testimony—I do not remember your exact words—but you generally hit on something that I think this bill lacks, when you addressed the situation of moving, and in your response as to what the National Football League did pertaining to this. With the pending suit and the judgment, they could not take any action which would serve as a repeat of a situation which might subject them to an antitrust suit.

I believe, Mayor Wilson, in your statement you indicated that professional football without the league would be nothing, and that the league is the key connection—the linchpin that connects all of them together. In trying to approach these problems, I hope we do not try to do this on a piecemeal basis—just remedying one situation that arises, for example, to the question of illegality that might arise as to revenue-sharing between a home team and a visiting team and a number of smaller communities such as Cincin-

nati or Green Bay. If they did not work under the present arrangement, then you might well see the concentration of football only in major cities. The same may be true as to television revenues.

So I hope that we follow your advice when you point out the importance of the league to professional football and endeavor to correct the problems that exist here. We have some problems that can arise if antitrust suits are successful. In the Judiciary Committee, I pointed out that the University of Alabama, which has had a good football history in the past, if they were to play Slippery Rock, a 90-10 division of receipts when it is played in Alabama might be negotiated. Before long you could see the destruction of the entire National Football League from communities and other aspects.

So I think you hit the nail on the head when you mentioned the importance of the league to these teams.

I have not made up my mind on this legislation. I still have some questions and concerns about this bill, but there is certainly a need for looking at the overall problems confronting professional sports today.

MAYOR WILSON. Of course, there are some who suggest that the University of Alabama ought to be a member of the NFL, Senator.

SENATOR HEFLIN. Well, we have sent a few graduates around. And I notice that Mayor Schaefer did not mention Joe Namath while speaking about Baltimore.

SENATOR GORTON. Thank you very much. We appreciate the help which each of you has given us.

Our next panel will consist of Mr. Pete Rozelle, commissioner of the National Football League, and Mr. Steven Ehrhart, executive director of the United States Football League, and Mr. James Fitzpatrick.

If they would come forward, we would appreciate it.

Mr. Rozelle, you may proceed. And again, as in the case of the previous panel—and we are running relatively long—your entire written statements will be included in the record as if read. If you could summarize them, the committee would appreciate it.

STATEMENTS OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE; STEVEN E. EHRHART, EXECUTIVE DIRECTOR, UNITED STATES FOOTBALL LEAGUE; AND JAMES FITZPATRICK, COUNSEL ON BEHALF OF THE COMMISSIONER OF BASEBALL

MR. ROZELLE. That is fine, Mr. Chairman.

I would like to commend you and the members of your committee for taking up what you have already heard is a very emotional interest on the part of the public and the sports cities.

This is the 25th year in which I have been commissioner of the National Football League, and I have felt since taking the job that my responsibility was to balance and attempt policies and push policies that would balance as best we could the interest of the team owners, the players, and the fans.

You cannot always succeed, but in the area of stability of franchises for almost two decades we were very successful. And the stability of franchises was a key to all three of those entities. For the players it meant large television contracts the league was able to

negotiate. The players, in turn, had the leverage to get some of that money on their salaries. And it was also the linchpin to solving collective bargaining disputes.

For the public it was a television policy that I think is the most generous in sports: free television, all games coming back to the visiting club's own city, national games and so forth. And, of course, the stability also gave the owners an opportunity to cease the situation of the past that saw 44 franchises fold or move before the NFL achieved stability.

So we had stability. It was a key, a key to the league's success. As Senator Long expressed a few moments ago, in 1966 a bill was passed permitting the merger of the then-AFL and NFL. I personally and the other owners in the league feel a responsibility when Congress passes something for you to give a quid pro quo to show a sense of responsibility for that action.

We did for about two decades. As part of that bill, you might recall, Senator Long, in Senator Hart's Judiciary Committee they were very concerned about franchise movement, and they wanted us to commit that as part of the merger there would be no franchise movement. And we, as I say, for two decades we have been rather successful in achieving that.

We have had 19 new stadiums or revised stadiums, some inside the cities, some in the suburbs because of land acquisition and so forth. But we have worked with the cities, we have worked with the communities in all of those instances.

We heard of the case of Minnesota earlier on the stadium that was built there, the domed stadium. The league committed. The Vikings made a number of commitments, including paying off the stadium even if they left. The league committed that a team would stay there at least 30 years; that if the Vikings attempted to leave, we would see that a team was there, and we made that commitment.

We worked in the past with Baltimore. As Mayor Schaefer testified, I worked with the Governor and with the mayor attempting to develop a plan for improving the stadium, which I think he did an excellent job in attempting to do with the legislature.

So the problem comes about, the tools have been taken from our hands. We were able to do these things in the past. We were able to have stability of franchises for two decades. Then in the 1980's we had the Raider case. Now you have heard this morning principally from Baltimore; you heard from Oakland; you heard from Minnesota. There are concerns.

Three years ago—almost 3½ years ago—before the House Judiciary Committee, I said if this Raider suit is not resolved in favor of the league, if the Raiders move without league permission, you will have a franchise-free agency. And I was not speaking just of football. You will have sports owners auctioning off franchises. Something I heard earlier today, it happened.

I had said that 3½ years ago; it has started to happen. The rumors of the numbers of cities and definite—there is rumor in a number of cities and definite action in others.

We attempted to look after the public interest in the Raider case. The Raiders sued their 27 partners. They moved to Los Angeles without permission of the National Football League. We went

through two trials lasting 5 months since 1980, and we were rewarded with a \$50 million antitrust judgment awarded by a jury in Los Angeles.

So when the Baltimore situation came up, we did not even feel, on the basis of what our attorneys told us—it was fait accompli really; we knew it ourselves—that we had any right with that judgment standing against us. We are appealing it. It will eventually get to the Supreme Court.

But we felt, frankly, that we had already given, having gone through 4 months of cases and a \$50 million judgment trying to protect the public interest, we felt, as Mayor Wilson said, 12—the 12 straight years of sellouts, the third highest gate revenue in the league, there was no justification. We did not feel there could be a rule for the west coast and then another one for the east coast, for Baltimore. So we are just going through the court process and attempting to see it through that way.

I appreciate, and I know all of the people in the National Football League, the players and the owners, that you people take such an interest with all of the problems you have today confronting you, your daily office time and committee hearings, in looking into this emotional issue. It is serious. We think that it is something that is of vital concern.

You saw these Colts fans here. I was in Canton, Ohio when Johnny Unitas was inducted into the Hall of Fame. And I do not know, there must have been several hundred fans—6 or 7, 8, 10 buses—went to Canton to see him inducted. There is a great tradition in Baltimore, just as there was in Oakland, as Mayor Wilson testified earlier.

We again appreciate what you have done, Mr. Chairman, and your committee in formulating this bill. We see some problems in it. One of the main ones would be we feel it is uncertain as to if we have antitrust protection in the area of franchise moves, because in Los Angeles we were sued by Al Davis and Los Angeles for blocking the move. If we had approved the move, the city of Oakland already had a suit drawn up to file against us.

In this case we took no action in Baltimore because of the \$50 million judgment against us. Baltimore is suing. We are involved in litigation with Baltimore over that issue. Literally, we are damned if we do and damned if we do not. It is very clear on the basis of what has happened in the past. So the antitrust protection in the area of franchise moves is very important.

The other is revenue sharing. Sixty percent, in some cases probably 70 percent, of the total revenue the clubs get is from television. Since 1961, that money has all been shared equally. Minnesota, a smaller market, Green Bay even, they receive as much money in the National Football League as teams in New York, Chicago or Los Angeles.

That has been challenged in the court case in Los Angeles. I would like to briefly read the statements made and confirmed in the cases having been made by Al Davis of the Raiders.

Pay TV is going to be all it is in a few years. It won't matter the size of the stadiums. But can you imagine 2 million viewers paying 10 bucks a head? That means that smart pro clubs have to be in the big TV markets. That's why we're thinking about a move to Los Angeles.

Another quote.

The big stadium is dying. The advantage I see in southern California is the tremendous TV market. Imagine the number of sets pro football could be hooked into.

And again,

The big stadium is dying. The important advantage is being in a big market. Imagine the possibilities of being hooked into 2 million sets at \$10 a household.

Those statements were made by Al Davis, and he admitted making them, in the trial in Los Angeles. It is clear to our owners that one of the main motivations of moving from Oakland, where there were 12 years of sellouts, to Los Angeles was the potential of pay television.

This was confirmed 3 years ago in 1981. We had a league meeting, and at that league meeting a number of owners had come to me prior to the meeting, and they expressed concern. They said the guts of this league is sharing the television income. And with those statements made at the trial in Los Angeles, we do not know that that is going to continue.

I studied the problem, and at the meeting in Hawaii I, as commissioner, interpret the constitution; at least our constitution states that I do. So I said that in the constitution it states that all television income is shared equally. And I said at that time I want to interpret that at this time as meaning all forms of television income—cable, pay and so forth. I said now that I have made that interpretation, I would like to see how many agree with it; how many agree with that interpretation; 27 clubs said they would not challenge the commissioner's interpretation of that sharing concept. Regular television, cable, pay, whatever it is, it is shared equally.

One club, the Raiders, stated that they wanted to reflect on it. That was 3 years ago. They were not quite sure that was right. It might be that we would need an exemption from the antitrust laws, and a number of other things were said. Three years later it is still on the books as a pass.

So one of our concerns on this bill, it will not do us any good if the clubs—if the television package is broken up, if the big city clubs, starting perhaps with Los Angeles, a big cable market, can bail and jump out of our package and go just cable. All of the other clubs then I say on commercial television and some form of television, they are diluted when your better teams are on cable.

So it is very important that revenue sharing be permitted by the NFL on all television. Otherwise, it is impossible to expand. In addition to the present smaller market suffering, there is no point in expanding if we go to someone and he has no assurance that TV income is going to be shared. What is the reason for him to have a franchise if it is in a smaller city?

Lastly, I will only say that we have a few problems about the mechanics of the bill. I think you did an excellent job. You made some suggested changes. The mechanics do disturb us to a certain extent, but we would like to continue working with your committee in making suggestions that the clubs or our attorneys feel might be helpful.

Thank you very much, Mr. Chairman.
[The statement follows:]

STATEMENT OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify before you today. We recognize the urgency of many matters before Congress, and we are gratified that your Committee attaches importance to legislation to protect the public interest in sports team franchise stability.

The Committee has before it the "Professional Sports Team Community Protection Act," S. 2505. Similar bills have been introduced in the House. And a different approach to team stability is set forth in S. 1036, the "Sports Community Protection and Stability Act of 1983," co-sponsored by Senator DeConcini and a number of other members.

For reasons I will outline, the National Football League strongly supports the policies of team stability reflected in these bills. When S. 2505 was introduced, Senator Gorton correctly suggested that while major league professional sports franchises are of economic and civic importance to communities, confusion now reigns on team relocation issues in professional sports. Federal law as currently developed ignores fan, league, and public interests that need protection. And, as a result, controversial eminent domain law proceedings are under way to fill the vacuum.

In this context, we have reviewed S. 2505 and the proposed revision of it, and we believe that these hearings will shed important light on the central issues that any final federal legislation must address.

PRIOR CONGRESSIONAL EVALUATION AND SUPPORT FOR CLARIFYING LEGISLATION

As now interpreted, federal law invalidates provisions of the NFL's Constitution, agreed to by all League members, entitling the League to determine the location of NFL teams. In the last Congress, legislation to reestablish league decision-making so as to protect fans and communities from arbitrary moves by sports teams had widespread support. Nearly one-fourth of the Senate and over 160 members of the House of Representatives co-sponsored such legislation. Further, the legislation was endorsed by dozens of mayors and numerous other civic, sports, and business leaders from across the country.

At the close of the 1982 session, Senator Heflin, a member of your Committee, described the support for, and need for, legislation on this subject as follows:

"With respect to the bill before us in this session . . . , there is a clear consensus that the two limited antitrust provisions of the bill deserve enactment. Those provisions would, first, allow leagues to keep successful teams where they are, and, second, allow leagues to share revenues to the benefit of teams in the less well-situated markets. Both of these provisions will protect the enormous financial and civil investments that taxpayers, fans, and communities make on behalf of their professional sports teams"

"Prompt congressional action in the next session will establish a uniform Federal law standard on team location matters, preserve the status quo in Oakland by protecting the interests of both the Raiders and the Oakland community, and eliminate the evident conflict between State eminent domain law and Federal antitrust law that threatens to keep the city of Oakland-Raiders dispute in State and Federal courts for almost a decade." (Cong. Rec. S. 15783-84, 12/20/1982.)

To date, such legislation has not been enacted, and subsequent court rulings have exacerbated the difficulties of preserving stable team ties for communities, sports fans, and leagues. The NFL's "reward" for seeking to respect fan support and community interests by attempting to keep the Raiders in Oakland has been four years of arduous litigation culminating in a \$50 million antitrust judgment against the League. We will continue to press our case in the Court of Appeals and, if necessary, we will appeal any adverse decision to the United States Supreme Court. But unless the current approach of the Raiders' case is overturned, or Congress confirms the right of a sports league to determine the locations of its operations, the NFL will be unable to respect the interests of any community that a member team proposes to leave.

There was in 1982—and there is now—broad recognition that approaches to federal law producing sports franchise "free agency" do not properly serve the interests of communities, leagues, or the public. In 1982, informed and disinterested commentary mirrored the support given by private citizens and public officials to clarifying legislation. A sampling of recent comments is illustrative.

An editorial in USA Today recently concluded:

"Cities, expecting to create millions in new income, give their names to teams. Fans give their hearts. Sadly, they sometimes get little in return. An owner who doesn't get what he wants from a town now can take the franchise to another city, leaving behind an expensive, empty stadium and fans with broken hearts. . . ."

"If this business of musical franchises continues without interference from Congress or the courts, it can only damage the health or professional sports. Each time an owner is able to thumb his nose at a league or at a city, the stability of the sports business is threatened. And when loving fans, robbed of their team, stop hating, they will stop caring about the game. Then the game will be over."

The Sporting News has stated:

"Franchise free agency? That's Commissioner Peter Rozelle's appraisal of the recent judicial setback suffered by the National Football League. The ruling by a three-judge appeals court upholds the federal court decision that allowed the Oakland Raiders to move to Los Angeles without NFL approval. . . ."

"In 1982, the NFL supported a bill introduced in Congress that would require a franchise to obtain league approval to quit a community where the franchise had been successful. The bill also would put beyond challenge a league's right to split revenues among all members. The courts are making that bill look better every day."

And Sports Illustrated noted the impact of the Raiders' ruling on the Baltimore situation, as follows:

"And now . . . the Colts leave Baltimore under cover of darkness. Of course, it's much easier now for the modern highwaymen who own sports franchises to use up cities and throw them away. Thanks to the antitrust laws, they don't have to ask for anybody's permission; all they need is a credit card to get a moving van in."

It is against this background that the NFL supports your Committee's efforts to develop a suitable solution to these problems.

THE NFL'S INTEREST IN THE LOCATION OF LEAGUE TEAMS

In considering the current problem of team franchise "free agency," it is vitally important to go back to basics—to consider the unique nature of professional sports leagues as business enterprises and to understand how franchise "free agency" has developed.

A professional sports league is a form of business partnership or joint business venture that produced a common entertainment product. The relationship among the clubs within a professional sports league is unique; it is found nowhere else on the American business scene. On the playing field, the teams are clearly competitors—and very effort is made to sharpen that competition. But in a business sense—in producing and marketing their product, here NFL football—the clubs are co-producers and revenue-sharing participants in a unitary enterprise. They are united to produce a form of "league" entertainment that would not exist without the series of interrelated commitments, agreements, and quid pro quos that constitute the league joint venture. These include commitments to operate in designated "home" communities so that national and regional balance and playing-field rivalries of vital importance to the entire League can be established and maintained.

Because leagues are joint enterprises with centralized policies and commitments among the members, it is to leagues—not to their individual member clubs—that Congress, other governmental authorities, the media, and the public have regularly looked for responsible administration of professional sports. Leagues are expected to act responsibly with respect to their television policies; leagues are expected to assure competitive playing field balance so that communities throughout the nation may support teams with an equal chance at championship; and leagues are expected to develop healthy relationships with college athletics and to avoid player eligibility policies that would destroy athletic programs. Leagues are expected to assure the integrity of their contests—to avoid a modern Black Sox Scandal. And leagues are expected to respect community commitments, fan loyalties, and public investment of funds.

But some federal courts are effectively rendering leagues powerless to act. They are at the point of giving individual league members the absolutely unique privilege of having all of the rights and financial rewards of league membership while simultaneously avoiding basis league obligations and acting as if they were independent entrepreneurs. They are putting leagues in an untenable situation—where an individual club is treated as separate, independent, and outside the plane of league decision-making, while all of the league's remaining members must conduct their operations on whatever conditions are unilaterally set by the individual club. The tail, in short, is wagging the dog. In these circumstances, when individual clubs are encouraged to act unilaterally and without regard to league commitments, how can the public, the media, Congress, or any other governmental authority reasonably expect to hold leagues responsible as the ultimate authority?

The current problem of franchise "free agency" thus has little to do with the actions of sports leagues. It relates, instead, to the inability of leagues—under current federal law—to act at all and to the inability of the NFL to pursue its traditional policies on franchise stability. During the NFL's modern history, no well-supported club had even been permitted to abandon its home community and fan base—until court decisions in the Raiders' case sanctioned the Raiders' abandonment of Oakland and left the League with no alternative in the Colts' situation.

Twice during the 1970's, successive owners of the Baltimore Colts contemplated relocating that team outside of Baltimore. In the early 1970's, the League would not support the transfer, because the Colts were highly successful on the field and well-supported by their fans. In the late 1970's, we urged the Colts' management to work with Baltimore and Maryland officials to resolve that situation, and actively participated with those officials to reach an acceptable solution.

Some have suggested—when it suits their purposes—that the NFL's concern for community and fan interests is of recent origin and that we now speak with the zeal of a convert. Such statements ignore the League's consistent record of franchise stability. They also ignore what we have said—and done—for more than two decades on the subject. For example, when I was questioned on national television about the League's position in 1972 regarding a possible Colts' move from Baltimore, I summarized the League's view:

"I know that the [Colts] are talking about training in Tampa . . . this coming summer and playing some pre-season games there. But, with the interest in the Colts in Baltimore and the interest on the part of the State of Maryland in having them stay there, I do not feel that the Baltimore Colts will leave the Baltimore area. . . . I do not expect any team to leave its present franchise area, hopefully ever, but certainly for many, many years."

In 1973, the League worked with local officials to secure improved facilities for the Buffalo Bills rather than authorize a transfer to the Pacific Northwest. Once the new facility was agreed upon, the Bills committed to remain in the Buffalo community for 25 years.

In the late 1970's, as another example, the Minnesota Vikings considered relocating outside of the Twin Cities. Rather than authorize a transfer, the League worked with community and state officials to secure construction of a new, multi-purpose stadium. As part of the agreement to construct the Hubert H. Humphrey Metrodome in downtown Minneapolis, the League itself made commitments regarding continued NFL tenancy in that facility for at least the next 30 years.

A review of NFL decisions on team location demonstrates, in short, a consistent NFL policy in favor of franchise stability—for sound partnership reasons. Public respect for the League is important to us; community support and public investments in stadiums and related facilities are vital to the league. Since 1960, virtually all NFL clubs have begun play in new or significantly improved stadiums. Most have been built or improved at least partially with public financing. As a result of this wave of stadium construction in the past two decades, nineteen NFL teams have changed their operations from one local stadium to another—generally within the city limits. Several of these new stadiums have been in suburban locations, such as Texas Stadium in the Dallas suburb of Irving. But the NFL had not authorized any member club to abandon its home territory, to walk away from its fans, or to ignore public investments in an unpaid-for stadium especially built for professional football.

THE OAKLAND RAIDERS' SITUATION

The recent efforts in Congress to address team location issues in relation to the abandonment of Oakland by the Raiders have been the subject of extensive discussion, but I will summarize the Raiders' situation briefly from the NFL's perspective.

Four years ago, when the Raiders announced their decision to move out of Oakland, they did so in defiance of the League's policies, the Raiders' formal commitment to represent the NFL in Oakland, and assurances given to Congress in connection with the 1966 "merger" legislation by the NFL and the American Football League—of which the Raiders were a member—about continuing Raiders' operations in the Oakland area. Prior to the Raiders' decision, no NFL club believed it had the privilege of ignoring formal League commitments and acting unilaterally in determining its area of home operations.

When the Raiders decided to move to Los Angeles, they had profits in the two preceding seasons averaging almost \$2 million, and they had the third highest ticket revenues in the entire League. The Raiders had sold out every game in Oakland for

12 straight seasons. And their publicly-financed stadium had annual debt service costs of \$1.5 million through the year 2006.

In the Raiders' instance, the League's membership voted—with no club dissenting—that the Raiders had not made a case for leaving Oakland and should remain there at least for one more season while the matter could be further reviewed. The clubs voted, in other words, that the Raiders should continue to have sell-out crowds in Oakland; that they should continue to serve Oakland fans; that they should continue to have revenues among the highest in the League; and that they should continue to generate income to repay the public financing of the Oakland Coliseum as well.

Put simply, therefore, the NFL was charged with an antitrust violation on the Raiders' move because the member clubs tried to prevent a profitable and financially sound NFL member club from abandoning its community—a community that had built and financed a stadium to the Raiders' specifications and had supported the team in extraordinary fashion.

And keeping the Raiders in Oakland has since been found to be so important to the public interest that the City of Oakland itself may be entitled to acquire the Raiders for that purpose through eminent domain. In its eminent domain suit, the City of Oakland has won important victories in the California courts, including in the California Supreme Court, supporting the City's effort to acquire the Raiders' franchise and continue its operations as an NFL member club in the public interest. And while the Raiders have opposed "retroactive" legislation in the Congress, they and their allies have been making a concerted, special interest effort to persuade the California legislature to amend the state eminent domain law to retroactively extinguish the City of Oakland's lawsuit against the Raiders. Further major efforts by the Raiders in that direction are reportedly under way this week in Sacramento.

If I had appeared before Congress five years ago and asked whether the NFL should allow the Raiders or any other team to move in the circumstances I have outlined, I know what your answer would have been. Congress would have made clear in unequivocal terms that a move of the Raiders from Oakland would be wholly unjustified. The Washington Redskins' revenues, for example, did not then match the Raiders, and if the NFL had proposed to authorize a Redskins' move, the reaction would be one of outrage.

So I ask: should it be illegal under federal law for a sports league to prevent a well-supported and financially strong member club from abandoning its fans and community?

THE BALTIMORE COLTS' SITUATION

During the Colts' thirty years in Baltimore, they were one of the League's more successful franchises on the playing field. They were involved in the 1958 overtime championship game against the New York Giants, which many have called the greatest pro football game of all time. Since the NFL-AFL merger in 1966, the Colts twice appeared in the Super Bowl and qualified for the playoffs on four other occasions. In recent years, however, the Colts' performance on the playing field was erratic and often unsatisfactory. The club last qualified for the playoffs in 1977.

During the 1960's and through the mid-1970's the Colts' financial success paralleled their success on the playing field. For example, Baltimore fans supported the club with 52 consecutive sell-out home games, and the Colts generally had gate receipts and total revenue in the top half of the League. More recently, however, the Colts' financial picture has worsened, with total revenues at or near the bottom of the League during the past five seasons and home gate receipts placing them last or next to last during four of the past five seasons.

When the Colts owner, Mr. Irsay, informed the NFL member clubs on March 2 of this year that he was considering Indianapolis and other communities as alternatives to Baltimore, the clubs concluded that, in view of the court decisions in the Raiders' litigation, the Colts' location was for the Colts to decide, not the League. If the League is powerless to prevent a highly successful franchise from abandoning its fans and community, how could it prevent a less successful franchise from so doing?

Since the Colts' move to Indianapolis in late March, we have frequently been asked why the NFL did nothing to prevent the Colts from leaving Baltimore. The answer lies in the terrible risk the League would run by taking such action when the antitrust laws can be interpreted—as they so recently have been—to deprive a sports league of its right to decide where the League itself will do business.

Four years ago, when the League's Executive Committee voted without dissent to oppose the Raiders' move, a primary factor in that decision was the NFL's desire to

adhere to its policy of team stability and to respect the loyalty and support given to the Raiders by the Oakland community and fans. In the ensuing litigation, however, these factors—which are strongly endorsed by the current proposed legislation—were criticized as irrelevant “buzzwords” entitled to no weight, and Oakland was described for the jury by Raiders’ attorneys as “the murder capital of America.”

In that litigation, the NFL was found to have no legal right to act on team relocation matters. As stated by the dissenting federal Court of Appeals judge, who would have held the League entitled as a matter of law to keep the Raiders in Oakland, this ruling that the NFL cannot determine the location of its teams.

“Is effectively [a] ruling that it may not enforce any collective decision of its member clubs over the dissent of a club member, although this is precisely what each owner has contractually bargained for in joining the enterprise. Without power to reach collective decisions, the NFL structure becomes superfluous, and professional sports, without a cost-effective policing mechanism such as the league, will dissolve. . . .”

“[The majority’s ruling] is tantamount to ruling that the NFL structure is itself *per se* invalid under the Sherman Act § 1; this will spell the end of sporting leagues as are currently used in football, hockey, golf, soccer, basketball and countless other associations in industries with similar endemic characteristics.”

This is a sad state of affairs, but it is the current reality. We simply cannot act on the assumption that there may be one rule of antitrust law for the Raiders on the West Coast and another for the Colts on the East.

On team-location issues, such interpretations of sports league agreements literally damn the League if we do and damn the League if we don’t. We were sued in Los Angeles for opposing the Raiders’ move. We would have been sued in Oakland if we had approved that move. We are now being sued in Baltimore for not preventing the Colts’ relocation; no doubt we would have been sued in Indianapolis if we had done so. We simply cannot risk further treble damages exposure in litigating matters of such critical importance in local and less than disinterested venues, especially under formless standards that condemn the League’s action on the baseless notion that a league is merely an aggregation of unrelated business competitors.

In view of recent developments, a continuation of the status quo risks repeated abandonment of fans, communities, and taxpayer supported facilities and the continuing application of federal law standards that will, as the dissenting judge warned in the Raiders’ case, threaten the basic structure of league sports and, in addition, directly conflict with state eminent domain law.

It is against this background that I address the proposals presently before you.

S. 2505 AND ALTERNATIVE PROPOSALS

Initially, let me offer two general observations as to essential elements of any legislative solution. First, legislation should provide a comprehensive solution to the problem of unrestricted team relocations—that is, it should provide both a clear legal framework for addressing future moves and address the two moves, those of the Raiders and Colts, that have primarily generated the current concerns in the Congress and elsewhere.

Legislation halting the Colts’ transfer but ignoring the Raiders’ move would reflect only expediency, and would be unfair to the Oakland community and the Raiders’ Bay Area supporters. It would also leave the NFL at risk for over \$50 million in trebled damages as a result of a legal approach that the Congress would have repudiated, and for having pursued a goal—seeking to preserve Raiders’ operations in Oakland—that California state law evidently regards as in the public interest. And piecemeal legislation would end the disputes over the Raiders’ or Colts’ transfers, since litigation will surely continue.

Legislation halting the Colts’ relocation but failing to deal with the Raiders’ move would also ignore the operating circumstances of the Raiders and Colts. The fortunes of these two teams—both economically and on the playing field—have been quite different in recent years. The NFL, as a League of equal members operating on common terms, cannot support a standard that would allow one of the League’s most successful, profitable, and well-supported teams to abandon its community while holding another team, with recognized stadium problems and far lower revenues, to different standards that force it to remain in its existing community. Until the Raiders’ matter arose, it was accepted in antitrust and otherwise that leagues were entitled to determine that teams should continue to operate in their existing locations. A provision applying legislation to currently pending moves would confirm that principle.

Second, legislation should recognize that leagues function as common business enterprises in jointly producing entertainment products that compete against other entertainment products and that all members have a joint interest in the location of league teams. All NFL clubs jointly product the NFL product and share the economic risks and rewards of NFL membership. Many internal balancing agreements and revenue sharing arrangements within leagues make it possible for teams in small and mid-sized communities to operate on equal terms with teams in major metropolitan areas.

While S. 2505 recognizes that financial pressures and hardships can lead to proposed team relocations, it does not directly deal with the underlying problem of financial stability throughout leagues. S. 1036, on the other hand, directly deals with revenue sharing, which provides a sound economic floor for all teams, thereby avoiding financial pressures for team moves before they occur. In the NFL, for example, all network television revenue is divided equally among the 28 clubs—a television distribution that may represent 60 percent or more of the operating resources of each club. Without revenue sharing, teams in smaller NFL communities simply could not generate the revenues necessary even to cover their operating costs.

Given the nature of professional sports leagues as business enterprises, legislation should recognize the vital interest of all league participants in deciding where they will produce and market their common entertainment product. Legislation should thus vest leagues themselves with the primary decision-making authority on team location. It should also confirm the propriety of revenue sharing among the member clubs of sports leagues.

S. 2505 as revised clearly meets certain of these objectives: (1) it establishes the policy of federal law to discourage the relocation of professional sports teams; (2) it specifies that a professional sports team may not relocate from its assigned home territory if the league of which it is a member does not approve such a relocation; and (3) it applies to both the Raiders' and the Colts' moves. These provisions reiterate the policy of team stability given expression by congressional committees on a number of occasions since the early 1960's, and they reconfirm the appropriateness of leagues, as common business enterprises, making business judgments about the locations of their operations that are routinely made by all business organizations.

At the same time, the NFL questions the need for establishing a federal board or agency, with a rather elaborate range of regulatory requirements, to supervise such matters, as S. 2505 contemplates. As I have already noted, the NFL has consistently followed a policy of team stability and has acted responsibly as a league with respect to such matters. On the sound principle that "if it's not broken, it doesn't need fixing," we view the inflexible notice requirements and other standards of S. 2505 as unnecessary and inappropriate. In addition, since sports leagues must directly compete in a broad entertainment marketplace with vigorous and financially powerful businesses that are not subject to such statutory or agency regulation, the NFL believes that continued reliance on responsible league action rather than a broad pattern of regulation is entirely appropriate. In the event that disputes should occur over the relative value of bona fide offers submitted under any right of first refusal concept, we believe that such disputes should be resolved either internally by the league, or by resort to private sector arbitration.

In summary, both S. 2505 as revised and S. 1036 have fundamental elements in common. Each strongly endorses a policy of team franchise stability. Each provides that a team may not relocate from its home territory without the approval of its league under that league's operating agreement. And each expressly applies to team relocations that continue to be under challenge in court actions.

S. 2505 differs, however, from S. 1036 in that the former does not confirm the authority of all league members to determine the revenue sharing patterns within a league, and S. 2505 does not deal directly with the kind of antitrust law interpretation that is the source of the current chaos with respect to league, fan, and community rights and interests. We believe that these aspects of the current issues need to be considered by this Committee and the Congress.

Mr. Chairman, let me conclude by thanking the Committee again for its interest in these matters.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS THERETO

Question. What is the position of the National Football League regarding the allegation that there is currently an artificial scarcity of teams in the NFL?

Answer. The NFL believes that there is no artificial scarcity of teams in the NFL and that such allegations are just that—allegations. No such allegation has been

supported by financial, economic, or other data of any kind. The NFL currently has more member clubs than any other professional sports league, and it operates in a highly competitive market that includes, among other entertainment and leisure attractions, major college football and another professional football league. The NFL also operates with the largest player squad sizes, and it employs by far the largest number of professional athletes of any professional league.

In recent years, a prevalent concern of outside commentators has not been "scarcity" but the opposite—namely, that there is an oversaturation of NFL football, and that public interest will inevitably wane during the 1980's, with declining attendance at stadiums and viewership on television. Illustrations of this concern as reflected in national and local media are attached at Exhibit A.¹

Question. Are there any cities which could now support NFL football but do not have teams? If so, which ones? Do you have any plans to expand to these cities? Would Baltimore and Oakland be priority locations in an expansion situation?

Answer. Before considering the specific possible cities for expansion, an understanding of the nature of "expansion" in league sports is necessary. NFL expansion is not simply the issuance of a football license; it is the creation by the existing clubs of an additional operating unit of the League which, if carefully selected, planned and structured, can be expected to upgrade the League's entire operation. In past expansions, the NFL's interest has not been to "sell" NFL expansion franchises at a profit; rather, the League's policy has been to strengthen the League's joint operation in the interest of all members—and future expansion would be planned on the same basis.

Expansion requires the existing clubs to convey to the new unit a portion of their own assets and to further subdivide their jointly owned League assets, including League trademarks and logos, League good will and reputation, the contracts of active players, priority rights in the player selection procedure, League know-how and experience, and the full array of the League's internal partnership commitments, including a pro rata share of all network television receipts (currently some 55-60 percent of the average NFL club's total revenues).

Responsible expansion also requires careful consideration of a broad range of factors, including the existing levels of competitive balance within the League; the availability of football talent and the dilution effects of added teams; the current financial stability of all clubs; the effects of expansion on television interests; League "regional" interests; the demographics and economics of various cities; the availability and suitability of local stadiums; climate considerations; and other factors, including the effect of expansion on the League's conference and divisional alignments. The League itself is just one of many entertainment producers in the highly competitive entertainment market and has its own competitive interests to protect.

The League believes that there remain cities in the United States capable of supporting NFL teams if properly structured and planned expansion efforts take place under stable League conditions. The many factors involved in choosing cities, in the absence of completed current studies of expansion locations, make it impossible to pinpoint the most likely prospects at this time. The League's 1974 evaluation that preceded expansion to Seattle and Tampa Bay identified those two areas as the most promising sites for 1974 expansion. At that time, serious consideration was also given to Birmingham, Chicago, Honolulu, Indianapolis, Los Angeles, Memphis, and Phoenix.

The League has no current plans for expansion to Baltimore, Oakland, or otherwise. The United States Football League will continue to increase the financial pressures on all NFL clubs. With the clubs also facing costs in excess of \$50 million in the Raiders' litigation, further dilutions of club revenues would be unwise. In addition, the approach to antitrust law application adopted in the Raiders case currently forecloses NFL expansion. Under that approach, the NFL cannot be sure that it could even keep expansion teams in the communities where it would place them or assume the continued sharing of revenues within the NFL, which would be vital to the survival of any expansion team. The District Court judge in that case stated, for example, that "it may be that the only type of agreement that is reasonable is one whereby the teams agreed that [a] . . . new team may play its home games in whichever city it selects."

Question. Would the NFL be supportive of legislation which enables the League to restrict the movement of teams but is not retroactive to the Colts and Raiders situation?

¹ The exhibits A-B were not reproducible and are in the committee files.

Answer. The NFL believes that legislation should apply to the Colts' and Raiders' situations. In testimony before committees of the Congress, the NFL has supported legislation, including S. 1036, applicable by its terms to team moves that remain the subject of pending court actions.

The NFL's reasons for supporting such legislation, and for declining to support legislation that would be inapplicable to the Colts' and Raiders' situations, were summarized at pages 15-16 of Commissioner Rozelle's statement filed with the Commerce Committee on April 27, 1984.

Testimony by Mr. Rozelle supporting the application of proposed legislation to the Raiders' situation was presented on August 16, 1982 at hearings on the Senate Judiciary Committee on S. 2784 (now S. 1036) and S. 2821. See *Hearings Before the Committee on the Judiciary, United States Senate, 97th Cong., 2d Sess. on S. 2784 and S. 2821, at 27-29 (1982)*. A further statement of the reasons for applying such legislation to pending team moves is set forth in the August 9, 1982, Senate "Dear Colleague" letter attached hereto at Exhibit B.²

Question. Has the NFL made any attempts to dissuade officials and business interests in cities like Indianapolis and Los Angeles from trying to lure NFL teams into their areas?

Answer. Over the years, the NFL has followed a policy of team stability designed to discourage the relocation of existing teams. In the course of stating and pursuing that policy, statements and actions of the NFL may have served to dissuade officials and business interests in cities not having NFL teams from seeking to promote or induce the relocation of existing NFL teams. Under the antitrust standards announced by the majority of the panel of the Ninth Circuit in the Raiders case, however, it is questionable whether efforts so to dissuade officials and business interests in cities such as Indianapolis would be effective or even permissible.

Question. You say in your prepared statement that the provisions of S. 2505 which establish an arbitration board, notice requirements, and other standards are "unnecessary and inappropriate." Under what circumstances would the NFL support the idea of local arbitration boards having the final say over team relocations?

Answer. The League's statement referred to "the inflexible notice requirements and other standards of S. 2505 as unnecessary and inappropriate." As stated in the April 13 version of S. 2505, for example, the notice requirements and other provisions on the timing of the relocation board's decisions could well put a financially troubled team in a "lame duck" position in its community for virtually an entire season. Further, as the NFL understands S. 2505, it does not now contemplate the creation of "local arbitration boards" as much as a board operating under the auspices of the Secretary of Commerce at the federal level.

As stated in Mr. Rozelle's prepared statement, "the NFL believes that continued reliance on responsible league action rather than a broad pattern of regulation is entirely appropriate." (P. 18.) However, if legislation adequately dealt with the kind of antitrust law interpretations that are the source of the current chaos with respect to the relocation of teams, it is possible that the NFL could effectively operate with arbitration concepts based upon league decisionmaking with respect to the location of teams, with disputes subject to private sector arbitration. The League's prepared statement thus noted that "in the event that disputes should occur over the relative value of bona fide offers submitted under any right of first refusal concept, we believe that such disputes should be resolved either internally by the league, or by resort to private sector arbitration." (Pp. 18-19.)

Finally, the NFL believes that there are major problems in attempting to fix a set of meaningful statutory standards for application by arbitration boards that would fairly apply to different leagues and to the differing circumstances of teams within leagues. One leading scholar³ has suggested that proposed standards have been "disarming in [their] simplicity" but could lead to "the sort of elaborate structure that is utilized in the control of public utilities." Professor Weistart's testimony on this subject before the House Judiciary Committee, Subcommittee on Monopolies and Commercial Law.

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS THERETO

Question. Do you agree that the April 13 draft of S. 2505 could affect the move of the Jets to New Jersey? How? Are you concerned, as I am, about the uncertain meaning of the term "metropolitan area"?

² Ibid.

³ Professor John C. Weistart of Duke University, co-author of Weistart and Lowell, "The Law of Sports" (1979).

Answer. The NFL agrees that the April 13 draft of S. 2505 could affect the move of the Jets to New Jersey, and we believe that the term "metropolitan area" and other terms, with their uncertain meaning, are inappropriate.

You suggested at the Committee hearing on April 27 that S. 2505 or similar legislation should not apply to decisions to transfer the stadium playing site of a professional sports team within its home area, including the decision of the Jets to play their home games at the "Meadowlands" stadium in New Jersey.

The NFL concurs that legislation should not extend to stadium transfers within a league-assigned home area, because such transfers, as they have occurred in the NFL, have invariably produced improved service to NFL fans, not an abandonment of those fans and supporters. Such local stadium transfers in the NFL have always been within the League-assigned home area; have been made in view of local commuting and television patterns; have been very well-supported by the teams' customers (including season ticketholders); and have resulted both in superior stadium facilities to better serve the fans of NFL teams and in the preservation of preexisting television patterns, guaranteeing that a team's games continued to be available within the home area.

Certain provisions of S. 2505 need clarification to specify that such legislation would apply only to proposed moves by a team out of its league-assigned home territory. Currently, S. 2505 defines home "territory" as meaning "the geographic area within which a professional sports team has agreed to operate." (§ 4(9).) However, other aspects of S. 2505 make it confusing and inconsistent with respect to stadium transfers within a territory: the bill loosely refers to "the territory and metropolitan location" where a team plays (§ 2(a)(1), (5) § 2(b), and § 3); but the term "metropolitan location" is nowhere defined. S. 2505 then defines a proposed relocation as meaning a transfer to a new "metropolitan area" (§ 4(4), (5))—another term not defined. And the bill finally refers to the need for authority for a relocation in terms of a change in "the metropolitan location or territory" of a team (§ 5(a)). Revision and clarification of these provisions is thus required.

Question. I understand that the NFL rules require League approval of a move within a League-granted territory, as well as a move outside the territory. So, but for the court decisions in the Raiders case, the Jets would have had to secure permission from the League. S. 2505 would require a moving team to get League permission before going to the Arbitration Board. Would that permission have been denied to the Jets?

Answer. Because of the court ruling in the Raiders' case, the NFL did not take any action on the question of the Jets switching within their home territory to the "Meadowlands" stadium. No poll or survey of the views of each club was taken, and the League was not in a position fully to analyze the factors underlying the Jets' decision. In these circumstances, there is no way of knowing whether the member clubs—if they had considered a Jets' proposal to switch from Shea Stadium to the Meadowlands stadium—would have approved such a transfer under the provisions of the NFL Constitution.

There is, however, a considerable NFL history of stadium transfers within the assigned home area of member clubs. As you know, the Giants commenced play in the Meadowlands stadium in 1975, at a time when the NFL Constitution did not expressly require League action on such transfers. In addition, since 1960 virtually all NFL clubs have begun play in new or significantly improved stadiums, and 19 NFL teams have changed their operations from one local stadium to another—often within city limits.

Several of these new stadiums are in suburban locations, such as Texas Stadium in the Dallas suburb of Irving and the Buffalo Bills stadium in the Buffalo suburb of Orchard Park. Similarly, the New England Patriots commenced play in a new stadium in Foxboro, Massachusetts, and the Detroit Lions play in the Silverdome in nearby Pontiac. In other instances, the stadium switch was from a suburban location to downtown—as when the Minnesota Vikings transferred from a stadium in Bloomington to the Hubert Humphrey Metrodome in Minneapolis. In terms of S. 2505, the NFL sees no justification for applying special statutory provisions to such "suburban" stadium transfers, just as we see no merit in applying statutory provisions to other local in-city transfers—for example, the New Orleans Saints from Tulane Stadium to the newer Superdome, the Philadelphia Eagles from Franklin Field to the newer Veterans Stadium, or the Pittsburgh Steelers from Pitt Stadium to the newer Three Rivers Stadium.

Question. Why don't you just allow the League to expand, so that Oakland has a football team, as well as L.A.? So that Indianapolis has a football team, as well as Baltimore? Don't you think that the youth of our country would respond to the increased demand for players? The market would ultimately tell you whether you've

overexpanded, wouldn't it? Why do you believe that the NFL, immune from the antitrust laws, should decide that issue?

Answer. The NFL is not "immune from the antitrust laws." The Supreme Court has ruled that, unlike professional baseball, professional football operates in interstate commerce subject to the antitrust laws. See *Radovich v. National Football League*, 352 U.S. 445 (1957). No legislation presently pending would give the NFL or any other sports league antitrust immunity for any action or inaction relating to expansion.

The current problems of team franchise "free agency" in professional sports stem not from any immunity but directly from certain antitrust court rulings that invalidate basic elements of league operational agreements on grounds that make no practical or legal sense and do not serve the purposes of the antitrust laws. The rulings apply the "conspiracy" provisions of the antitrust laws to professional sports leagues in a highly arbitrary manner, so that the decisions of managing committees or boards of directors of leagues are mistakenly treated as continuing "conspiracies" among entirely independent horizontal economic competitors.

The leading scholarly analysis of sports legal issues concludes that there is no persuasive justification for this approach:

"[T]here is a great deal of economic interdependence among the clubs comprising a league. They jointly produce a product which no one of them is capable of producing alone. In addition, the success of the overall venture depends upon the financial stability of each club. The members must, therefore, refrain from direct, interfirm economic competition and, in fact, do utilize various cross-subsidy devices to compensate for the natural inequities arising from differences in the economic potential of various franchise locations.

"Since a league's member-clubs do not compete with one another, it seems inappropriate to make them subject to legal principles designed to control the behavior of firms which are fundamentally different. In its basic nature, a league-firm is not a conspiracy. To treat it as such is to force results which are unlikely to achieve any purpose intended by Congress.

"This is not to say that a league's operation enjoys complete antitrust immunity. Rather, what it means is that we must select a different antitrust frame of reference for judging the league's conduct." J. Weistart & C. Lowell, "The Law of Sports" § 5.11, at 757-58 (1979).

As for expansion of the NFL to Oakland, Baltimore, or any other city that would request an NFL franchise, the NFL believes that such a course of business conduct would be highly irresponsible and detrimental to such expansion cities and the League itself. The "expansion" of a professional sports league requires each existing club to contribute assets to the new teams (in the assignment of player talent and in other respects); it produces a subdivision and dilution of the revenues of the existing clubs; and, if not properly planned and implemented, it can produce league franchises that are weak or "sick" both on the playing field and financially. The problems of such franchises, moreover, are not isolated or limited to the "sick" franchise itself; they result in lagging fan interest and reduced revenues, for example, for all other teams that must play such a club at "home" and "away." Past NFL expansion has been carefully programmed to avoid or minimize such problems. Future NFL expansion—whether to Oakland, Baltimore, or any number of other cities that have expressed interest in NFL expansion—would have to minimize such problems and also be conducted so as to evaluate and treat all applicant cities on fair terms.

In addition, under the rulings in the Raiders' case, the NFL cannot be sure that it could even keep expansion teams in the communities where it would place them. One federal judge has stated, for example, that "it may be that the only type of agreement that is reasonable is one whereby the teams agreed that [a] . . . new team may play its home games in whichever city it selects."

Finally, the NFL already operates—both at the box office and on television—in light of market conditions in a highly competitive entertainment marketplace that includes other sports and nonsports entertainment. Poorly planned or overly ambitious expansions of professional sports leagues in that marketplace have already demonstrated that such expansion can have sharply negative effects on leagues, member teams, and cities. The NFL has been, and will continue to be, sensitive to these circumstances and other indicators of market conditions in considering possible future expansion of the League.

Question. What are the ramifications of the Ninth Circuit decision in the Raiders case? How far does it reach, in affecting the collective decision-making of professional League members?

Answer. The decision of the majority of the Ninth Circuit panel in the Raiders' case has very broad ramifications for professional sports leagues. In addition to

team relocation matters, the implications of the decision extend to league agreements and joint decisionmaking on league expansion, revenue sharing within leagues, ownership policies and standards, telecasting and broadcasting policies, and other aspects of producing and selling a league sports product.

By subjecting business decisions at the core of league joint ventures to ad hoc review under the "conspiracy" provisions of the antitrust laws, the courts in the Raiders' case have erroneously prescribed a legal model that treats NFL franchises as independent, economically hostile business competitors. Under this competition model and the "reasonableness" standards of the majority of the Ninth Circuit panel, sports leagues themselves will no longer be legally accepted as joint business organizations. Only "Barnstorming" and an abandonment of the elements of league joint venture agreements that are capable of affecting the economic interests of any individual club will protect leagues from attack on antitrust "conspiracy" grounds. Any league franchise with an individual reason to act unilaterally will be able to dictate fundamental changes in the internal operating patterns of sports leagues through the threat of lawsuits tried to juries under antitrust principles that ignore both arm's-length league agreements and the unique league relationship. All internal league agreements and decisions will thus be tested under the antitrust standards applicable, for example, to agreements between wholly unrelated computer manufacturers.

In this light, the dissenting judge of the Ninth Circuit panel in the Raiders' case concluded that the majority's ruling that the NFL cannot determine team locations: "is effectively [a] ruling that it may not enforce any collective decision of its member clubs over the dissent of a club member, although this is precisely what each owner has contractually bargained for in joining the enterprise. Without power to reach collective decisions, the NFL structure becomes superfluous, and professional sports, without a cost-effective policing mechanism such as the league, will dissolve. . . ."

Senator GORTON. Thank you, Mr. Rozelle.

Mr. Ehrhart.

Mr. EHRHART. Thank you, Mr. Chairman.

I was down here a couple of years ago in front of the same committee, and not many people knew about us; but I think in a few years we have made tremendous progress.

I would like to, quite frankly, digress from my written statement, although I know the chairman has put it into the record. But you have heard a lot of talk today about all of the ideals and goals that have been discussed here, and quite frankly, the United States Football League has done more in the last 2 years to accomplish all of those goals than anyone else that has spoken here today.

We have created the teams for these communities. We have brought product to the fans. I know Senator Heflin is quite familiar with Ambassador Marvin Warner's efforts with the Birmingham Stallions, bringing professional football to the Birmingham area. It has become one of our strongest franchises there.

We have brought football to those communities where there is not football, but strong cities like Phoenix, San Antonio, Jacksonville, Memphis, Birmingham, the team that is playing as the Oklahoma Outlaws in Tulsa.

We have also addressed the issues that Senator Long was bringing up by bringing football to those NFL cities where there was no way to get tickets. In New Jersey and Denver and some of these areas where there was no way to steal a ticket, we have been able to bring football there, and I think we have been rewarded by having good support.

We know we are a young, building league, and we are stumbling here and there, but we are going to whip it in the long run.

But there is another side to the coin that I think has not been addressed here today that I think is very important, and I am not

sure even the people that are here—I know the chairman was from a State where we have had some problems, but quite frankly, we have tried to place franchises in certain cities where we have met with significant opposition.

We had a strong group that wanted to place a team in the Kingdome up in Seattle. Because of I won't—quite frankly—I will say it—hindrance from the Seattle Seahawks, we were unable to accomplish that. The same is true at the Metrodome in Minneapolis. We were invited by the Metrodome to put a team there. However, they had significant problems with the Minnesota Vikings. Obviously that is competition, and those teams that are established do not like it. We are the new kid on the block, and of course we are striving and struggling, and I think we are bringing those ideals that are the subject of this hearing here today.

I think that has to be addressed in the whole context of these bills where we have willing owners and people willing to gamble, and the businessmen that we have all talked about here, are willing to strive and break new ground. I think we have to address that side of the coin, too.

We do, however, have several progressive stadiums and cities—and I am sorry Senator Lautenberg had to leave, but quite frankly, the Meadowlands has been very cooperative. They have been aggressive. They now have three teams playing in their stadium—the Jets, the Giants, and the New Jersey Generals, the team in our league. They are all coexisting and getting along there in that city.

Therefore, I would simply suggest that if there is going to be protection of various interests in the situation, I think we have to look at that overall picture. And I think that again we are the kid on the block that has not had the kind of exposure, and the hearing today is not focused on the kind of efforts that we have brought to the table.

Another example, we expanded in the Pittsburgh area this year, a very strong football situation. The Pittsburgh Maulers were able to get a lease with Three Rivers Stadium, and immediately the Pittsburgh Steelers sued Three Rivers Stadium. So there is a lot of pressure, and of course, the name of the game is competition; and we are bringing competition to the market.

In San Diego we tried to place a team there. Mr. Gene Klein, the owner of the San Diego Chargers, was vehement in his opposition to allowing us to place a team there.

So there are two sides to this coin, and I do not address this to the NFL office. Our goals are very similar to the NFL as a whole but the self-interest of certain individual owners, which I am sure we would have that same self-interest that Pete would have with some of his owners that is the problem.

I think this has to be analyzed in the overall view of how we try and relate, as Pete says, these various interests—the fans, the communities, and those owners who in their sense are hanging on to a good deal, and in our sense some of the owners that are willing to gamble and step up to the plate.

So if we are going to espouse a lot of these ideals, I would certainly want us to take that into consideration. We are certainly trying to accomplish and work along with all of the ideals and goals, but we are not as well known yet. But I think that, as Sena-

tor Heflin knows, as the Birmingham Stallions gain some continued maturity and tradition, they are going to be a real strength there.

We will continue to do so. Our league is committed to do that.

The one relocation we did have is the Boston Breakers move to New Orleans, and they had a terrible situation facilitywise in Boston. Under all of the circumstances it just was not working out there. However, they have met with great success, and the fans of New Orleans have had the opportunity to get that ticket, and right now it is a team that is playing well, and it is an exciting team.

Thank you very much.

[The statement follows:]

STATEMENT OF STEVEN E. EHRHART, EXECUTIVE DIRECTOR, UNITED STATES FOOTBALL LEAGUE

Mr. Chairman: On behalf of the United States Football League and its Member Clubs, I would like to thank you and the members of this Committee for inviting us to present the views of the USFL with respect to S. 2505, the "Professional Sports Team Community Protection Act." Although the major thrust of this proposed legislation would not be currently applicable to the USFL due to the stated limitations in the bill, both the sensitivity and the public urgency of the questions raised by the issue of franchise relocation make it essential that the USFL address this issue as well.

The United States Football League was founded less than two years ago. However, in this short period of time, the League has grown from twelve (12) original member clubs to eighteen (18) clubs. There has been one relocation of a franchise—the Boston Breakers moved to the City of New Orleans and became the New Orleans Breakers. Thus, our League has become quite acquainted with the long and often difficult process of franchise location—and relocation—in our brief existence.

While the USFL endorses the purpose and public policy underlying S. 2505, we believe that the regulatory framework envisioned by this legislation does not present a satisfactory solution to the problems at hand and would not best accomplish the goals of the legislation.

THE USFL POSITION ON RELOCATION

The USFL Constitution governs the duties and obligations of its member clubs, including the rights of a club to relocate to another area outside its present home territory. Stated briefly, no member club may relocate without the prior approval by the affirmative vote of three-fourth ($\frac{3}{4}$) of the existing member clubs.

The objective of this league rule is to provide a stable atmosphere for the continued growth of the League, as well as its member clubs. Thus far, we have been able to provide such stability because of the strength of the USFL's commitment to each of our franchise cities. We recognize, especially as a new league, that the measure of our success is directly proportionate to the level and intensity of community support. A review of our operations would surely evidence this fact. The League has expended a great amount of time and money in order to avoid transfers of our member clubs. We have done this so these franchises would remain in their respective areas and have the opportunity to develop significant support among their fans.

However, I mentioned above the relocation of our Boston franchise to the City of New Orleans. The move was due solely to the fact that the team could not financially survive under the circumstances in the Boston area. The League owners, recognizing the severity of the problem, approved the franchise relocation for the 1984 season. The New Orleans franchise, which is averaging 37,000 fans for each home game this season, has been a solid franchise and provided an increased sense of stability to our League.

I sincerely believe that in all cases the USFL balanced the interests of all parties—the League, the individual owner, and the community. The League has been responsible and fairminded on the issue to team location.

I would like to point out that this issue of team location has been a particularly difficult problem for the USFL. In many communities in which we sought to locate franchises—communities in which we could create significant new job opportunities and generate substantial revenue, and in which fans would embrace us wholeheartedly—we have encountered tremendous obstacles from the National Football

League (NFL). In San Diego, the San Diego Chargers blocked our opportunity to utilize a public stadium. In Minneapolis, the Minnesota Vikings are seeking to enforce an exclusivity clause contained in their lease with the Metrodome Sports Authority to prohibit the use of the Metrodome by the USFL. As you are aware, this type of exclusivity clause was adjudicated as violative of the federal antitrust laws in the Hecht case some twenty years ago. However, it is still being used as a weapon by the NFL to deny a community its right to watch and support another professional football team. Thus, the difficulties the USFL faces in becoming a financially successful venture are only exacerbated by this exclusion from important markets. As a new emerging competitor of the NFL, we are attempting to gain local community support but in several circumstances are being denied entrance to these communities.

THE USFL POSITION ON S. 2505

The United State Football League supports the goals and policies reflected in S. 2505. Major league professional sports franchises are of crucial and vital economic importance to communities, and that public interest needs protection. However, that protection is not best accomplished by the passage of this legislation. I believe that the interests of all parties are served by allowing the League to make economically sound business decisions regarding the location of their respective clubs. The federal regulatory framework provided by this legislation impairs the League's ability to make such financial determination.

The prosperity and growth of the League is inextricably tied to the prosperity that each member club enjoys. A club which enjoys such prosperity, which enjoys community support, would not be permitted to abandon its community. However, if any one team encounters financial difficulties in a community that does not support it, then the rest of the clubs suffer financially as well. The League would have the duty to take appropriate action, including studying the feasibility of relocating such a franchise. However, this should be an internal financial determination made at the league level, and should not be subject to a web of federal regulatory procedures.

Another shortcoming in this S. 2505 must be noted. The proposed legislation grants a professional sports club a five-year grace period before it would be subject to the bill's network of rules and regulations. However, a triggering mechanism defined in terms of years is wholly irrelevant to the degree of financial success a professional sports team, or league, may enjoy.

CONCLUSION

Mr. Chairman, thank you again for the opportunity to present the views of the USFL to this Committee. Although the league is opposed to this enactment of this bill as currently drafted, the League is in sympathy with those cities which have supported professional teams and made them financially viable. However, the methodology of this bill does not accomplish its underlying philosophical goals.

Senator GORTON. Thank you.

Mr. Fitzpatrick.

Mr. FITZPATRICK. Thank you.

My name is Jim Fitzpatrick of Arnold and Porter. I am appearing here on behalf of the commissioner of baseball.

I think the thing that strikes me is that there is one unifying point in terms of all of the testimony today—Senators, witnesses, and in the audience—that there is an overriding concern of the leagues and the commissioners, the teams, and the mayors, for franchise stability. The whole question boils down, in my judgment, to the nature of the remedy, the nature of the process that one institutes to help maximize franchise stability. And we will have some suggestions at the end of our oral statement as to the format that we would suggest would be preferable rather than the format that is embodied in this bill.

Baseball, we think, has a very strong history of franchise stability. It is spelled out in our statement. Of the 10 metropolitan cen-

ters that had baseball at the turn of the century, 9 still have baseball. Washington is the sad exception to that fact.

The Cubs have been in Chicago for 110 years; the Phillies have been in Philadelphia since 1883; the Reds have been in Cincinnati since 1890.

Baseball honors and cherishes and is concerned about franchise stability; and we think that we have acted in a way that is responsible and responsive to home communities when issues of franchise relocation have come up.

Of our 10 expansion teams, 8 of them are still playing in their initial location. In Senator Kasten's community they are the beneficiary of one of those expansion teams that had an unfortunate history in Seattle. Then there was a second expansion team that was added in Seattle. So there has been very little movement of expansion teams. The second Senators expansion team that moved to Texas was the other.

We think that the history in baseball has been one of great stability and great concern for home communities, and that has not come about just by accident. We have procedures built into our rules which have a presumption toward franchise stability.

First, one has to get league approval. Three-quarters of the clubs have to vote for any relocation. We just added to this process last year an additional requirement: That a majority of the teams in the other league have to vote for a franchise move. There is some irony in the fact that the process in baseball that we have imposed to help guarantee franchise stability has been declared in football to be an antitrust violation, a process that we have built in because we feel strongly that one should protect against frivolous or preemptory moves, a process that has, in other sports, been declared to put one at risk under the antitrust laws.

So we have both league requirements and then the commissioner's oversight, who has an overriding responsibility to make judgments in the best interest of baseball. He looks at financial stability, looks at the home territory efforts to preserve a club, and looks at questions of integrity, which are issues that simply would be inappropriate and beyond the reach of any arbitration board one could suggest.

We feel that there is no need to federalize the process of franchise movement, and we think that this bill, which creates an arbitration board, raises serious questions in terms of the responsibility of the Federal Government. It raises a fair question as to whether there is an alternative technique, which we see in Senator Heflin's bill, as a preferable approach to help ensure franchise stability.

We are concerned, and as other witnesses have been here, with the process of reducing franchise relocation decisions to a precise mathematical formula as to whether or not an offer, a competing offer, is "of equal value." That reduces the entire question of sports ownership and sports location to a much, much narrower compass for the decisions that are made in baseball, at least today.

We do not term questions of ownership or franchise location or relocation simply on the basis of any narrow, specific formula. We think that in terms of remedy—and there is quite clearly a serious and universal perceived need for some additional remedy—we feel that the proposal in Senator Heflin's and Senator DeConcini's bill

which permits sports leagues to exercise their inherent concern about franchise stability and permits them to implement the process that they have set up to preclude preemptory moves is the appropriate remedy, rather than setting up an arbitration board which could raise institutional questions about the relationship of the Federal Government and individual clubs.

The Secretary of Commerce, under this bill, would pick the person who makes the decision. And there is some question whether the Commerce Department should be in the position of picking the person who makes the ultimate decision. That I think raises fair questions about the relationship of the Federal Government and the political process on the questions of franchise moves.

Our suggestion, in sum, is that the better remedy for a widely perceived problem is that contained in Senator Heflin's and Senator DeConcini's approach rather than the creation of an arbitration board.

Thank you, Senator.

[The statement follows:]

STATEMENT OF JAMES F. FITZPATRICK ON BEHALF OF MAJOR LEAGUE BASEBALL

My name is James F. Fitzpatrick. I am an attorney with the firm of Arnold & Porter; we represent the Office of the Commissioner of Major League Baseball. I am appearing today on behalf of the Commissioner to present the views of baseball with respect to S. 2505. I will confine my comments primarily to the Committee Staff's revised working draft of that bill, dated April 13, 1984.

Baseball fully supports, and has implemented, the policy set forth in the bill of encouraging stability of professional sports franchises. However, for reasons explained below, we do not believe that S. 2505, which puts the federal government in the business of ultimately controlling franchise moves, is a necessary or effective means for promoting this policy. Baseball has over the years demonstrated an excellent record of stability in terms of the location of its franchises and has developed an effective system for evaluating and managing any proposed relocations. The standards and procedures employed by Baseball in franchise relocation are in our opinion far more satisfactory, from the viewpoint of both the public and the sport itself, than those proposed in S. 2505. In short, based on our experience in Baseball, we believe that federal intervention through legislation such as S. 2505 is unnecessary, and is clearly not the appropriate way to deal with this issue. Rather, professional sports leagues should be free to control franchise relocation, without fear of antitrust liability, by exercising their inherent concern with unwarranted franchise shifts.

I will begin with a brief review of Baseball's historical record on franchise moves.

BASEBALL'S RECORD OF STABILITY OF FRANCHISE LOCATIONS IS EXCELLENT

Baseball has a longstanding policy of retaining teams in their home area where at all possible. Of the ten metropolitan areas where Baseball had franchises at the turn of the century, nine of those areas still have franchises today, over eighty years later. Indeed, some teams have remained in the same city since the late 1800s. The Cubs, for example, have played in Chicago since 1876, the Phillies in Philadelphia since 1883, the Pirates in Pittsburgh since 1886, and the Reds in Cincinnati since 1890. Moreover, of the ten expansion teams created in Baseball, eight have continued to play their home games in the same area. Baseball has thus demonstrated, we think, a remarkable record of franchise stability.

Although there has been some movement of franchises from cities that had more than one team, that movement has had the beneficial effect of bringing Baseball to new areas and new fans across the country. And, other than Washington, D.C., all of the cities from which a baseball franchise relocated either had another franchise within their metropolitan area or the league placed a new one there within a short period of time.

There have of course also been many transfers of ownership among baseball franchises without concomitant geographic relocations. Although we do not have a complete accounting of all franchises sales, our records, which are fairly comprehensive,

indicate that of thirty-nine sales, thirty-six have occurred without relocating the franchise involved. Baseball's concern for franchise stability, therefore, is not simply the fortuitous result of continuous ownership of those franchises, but a concerted effort by the leagues to ensure that clubs maintain their geographic identity.

Significantly, Baseball's record on franchise stability has been even stronger in recent years.¹ Since 1970, there has been only one relocation—the move of the Washington Senators to Texas. And, as I am sure many of the Members of this Congress are aware, that move came only after months of effort on the part of the American League and the Commissioner to find local ownership to keep the team in Washington. When those efforts failed, the Commissioner finally agreed to permit the move to Texas.

It is clear, then, that Baseball's management has demonstrated over the course of many years a solid commitment to franchise stability and to the protection of fan and community interests. We have promoted and required team stability because it makes good sense for Baseball as well as for the public. We strive to develop an identity for our teams and loyalty among our fans. Baseball, like other professional sports, needs strong community support and, often, the investment of public funds in stadium facilities for franchises to be successful. Franchise stability encourages fans to follow a team's performance and track the statistics of their favorite players. Such stability also encourages inter-city rivalries among teams, which again generates fan interest and excitement, and promotes attendance.

Baseball continues today to place great value on the stability and continuity of its franchises, as well as on the strong bond which can develop between a team and its home community. Baseball believes that well-supported and financially successful franchises should not, under most circumstances, relocate their operations, and we have been faithful to that philosophy.

BASEBALL ALREADY HAS AN EFFECTIVE SYSTEM FOR EVALUATING FRANCHISE MOVES

Baseball's record on franchise stability, in which we take great pride, is no accident. Baseball has established a set of rules governing both transfers of ownership interests in a franchise and change of location of a club. There are actually two levels at which any franchise change must be evaluated—among the members of the two leagues and at the Commissioner's Office.

First, each league² has, as part of its constitution, a requirement that no transfer of ownership interests or change of location can occur without the consent of three-fourths of all members of that league.³ In addition, the President of the league may request any information relevant to the proposed action and the effect and consequences of that action upon the other members of the league. This information may include financial balance sheets and income statements, lease agreements, concession contracts, and radio and television broadcasting contracts. The President of the league evaluates this information and makes a recommendation to the members of the league. This recommendation, and the league's decision, are based on much more than a simple calculation of financial profitability; they look to the overall stability of the proposed change and to its effect on the entire league.

The Commissioner's Office also is fully involved in this process. The Commissioner, by agreement between the leagues, is empowered to investigate, either upon complaint or upon his own initiative, any act which is charged or suspected to be not in the best interests of Baseball. The Commissioner, therefore, is not limited to any specific set of criteria in evaluating a proposed franchise relocation; his concern extends to all aspects of a possible relocation that may affect Baseball. He would consider, among other things, the interests of the home community, and the support and commitment that community has given to its franchise. He would also consider the effect a move may have on the structure of the league, and whether traditional rivalries among teams may be affected. And, if a proposed sale is also involved in the franchise move, he would consider the integrity and stability of the new owner.

In short, any franchise proposing to relocate to a new area must make a strong case for doing so. The perspective of both the league and the Commissioner in evaluating potential relocations is much broader than that of the particular team in-

¹ In fact, the Major League Agreement was amended in August 1983 to require approval for franchise relocation not just by three-fourths of the clubs in the league affected by the move, but by the majority of clubs in the other league as well.

² Although the American and National Leagues follow essentially the same procedures, there are some minor variations, not relevant to this discussion, in the National League procedures from those noted here.

³ As noted earlier, the Major League Agreement also now requires that a majority of the clubs in the other league support the relocation.

volved. While the interests of that team are necessarily important, they are part of a larger equation, which focuses on the sound, long-term interests of the game of baseball, and which is calculated by those experienced in the successful management and operation of the sport.

THE STANDARDS ESTABLISHED BY S. 2505 FOR FRANCHISE RELOCATION ARE
UNSATISFACTORY

The means established in S. 2505 for discouraging relocation of professional sports franchises are both inadequate and inappropriate. Before discussing why we believe it is improper for the federal government to be involved in this process at all, let me first explain why the standards the government would use under S. 2505 for evaluating franchise moves are in any event unsatisfactory.

S. 2505 calls for a Professional Sports Team Arbitration Board, constituted in an ad hoc fashion for each particular relocation case, to determine whether any offer to retain the location of the franchise in its home community is "equal to or greater in value than the proposed relocation." If there is such an offer, the Board cannot approve the proposed relocation, even if the league and, if necessary, its Commissioner have consented to the move. The only criterion for the Board's decision is its assessment of the bottomline financial value of the offers. Moreover, in most cases, broadcasting revenues in either the current or future location cannot be part of this calculation. This is done despite the fact that local and regional television and radio revenues may be a significant factor in the financial equation (in Baseball they account for approximately fifteen percent of a club's operating revenues).

The one instance in which the bill permits the Arbitration Board to include broadcasting revenues in its financial calculation is when the Board decides that an owner's claim of "financial hardship" is warranted. Such a claim is considered warranted if, in the words of the bill, "the team involved has incurred net operating losses . . . to an extent that poses significant danger to the continued existence of the team." Although we are pleased that this standard for including consideration of broadcasting revenue in franchise moves no longer makes reference, as it did in the previous draft of the bill, to the "manifest inadequacy" of stadiums or to arbitrary per centum attendance figures, the new standard for "financial hardship" is still quite vague.

The point is not that broadcasting revenues always should be included in any financial calculation—after all, certain cities will always have a strong competitive edge in this area—but that they should never be entirely excluded. Broadcasting revenue, as with a host of other factors, ought to be relevant to the relocation decision, even if it is not part of a dollar-for-dollar comparison. Indeed, the major problem with the standards established by S. 2505 is that they attempt to reduce the Arbitration Board's decision to a one dimensional, financial test. And even that test would not in all probability be imposed consistently, because each Arbitration Board will have different membership.

It is of course not surprising that Congress would be reluctant to grant an ad hoc Arbitration Board wide discretion in making decisions regarding the structure of professional sports leagues. The Board would completely lack the experience and perspective necessary to make such decisions in a discretionary manner. That does not mean, however, that broad discretion is not needed in ruling on relocation issues. Rather, that discretion should be exercised by the sports leagues themselves.

There may well be occasions when an offer to retain the franchise in its home community exceeds in value the proposed relocation, yet the home community offer should be rejected. For example, the individual submitting the home community offer could be connected to the gambling world, or have ties with organized crime. S. 2505 does not take these issues of integrity into consideration. The Commissioner of Baseball would. The Commissioner, as well as the leagues, could also block the sale of a franchise, even if it were for purposes of maintaining the current location, if the individual making the offer did not meet certain criteria of financial stability, perhaps because there was a lack of equity and an abundance of borrowed funds in his financial package.

Again, relocation decisions cannot be based on quantifiable factors placed in a rigid formula for an ad hoc Arbitration Board to calculate. They must be based on a variety of considerations, weighed and evaluated by those whose job it is to manage their professional sport.

IV. THE FEDERAL GOVERNMENT SHOULD NOT INTERVENE IN FRANCHISE MOVES

What S. 2505 does essentially is add a federal administrative layer onto the process by which a professional sports team changes its metropolitan location. Under

this bill, a team must receive league approval, if so required, for relocation and receive approval of the Arbitration Board. This merely delays the relocation process—by as much as eight months—without in our view adding substantively to that process. More fundamentally, it is unnecessary to involve the federal government in the process of relocation at all.

Federal intervention to restrict franchise relocation is not good public policy. Where does one draw the line? Professional sports teams are not the only private enterprises which play a vital economic role in the community and which may receive various types of public support. Other major companies may be just as important—or even more critical—to local economies and cannot be easily replaced if they decide to close down operations in one area and move to another. While I am not here today to propose solutions to this entire range of problems, I do have a suggestion on how to handle this issue in professional sports.

The preferable solution for dealing with franchise moves is for the sports leagues to have the freedom to assess the merits of proposed transfers under their own internal rules and regulations, and to determine whether they will allow such transfers. This will reinforce what I believe is already a strong incentive within the sports leagues for franchise stability. The interests of the sports leagues go well beyond those of the profit potential for a particular owner. The leagues are concerned with community interests, and are accountable to the public and to the media for their conduct.

This system of self-help, as noted above, has worked extremely well in Baseball over the years. Franchise continuity and stability have been outstanding. However, in light of the Ninth Circuit's recent decision in the Oakland Raiders case,⁴ the problem now for other sports leagues is that they cannot prevent even their best supported and most financially successful teams from abandoning their local communities, without the threat of treble-damages exposure under the antitrust laws. The Ninth Circuit decision should be overruled, either by the Supreme Court or by Congress. There should be a modification of the antitrust laws as they apply to professional sports leagues, to enable leagues to exercise responsibility for decisions to relocate teams without fear of crippling legal penalties under the antitrust laws.

It is the sports leagues, and not the federal government or an arbitration board, that are in the best position to consider all the factors relevant to a particular relocation decision. They should be equipped with the legal protections necessary to fulfill this responsibility.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS THERETO

Question 1. Please describe in greater detail the efforts of the American League and the Commissioner's office to prevent the relocation of the Washington Senators to Arlington, Texas. Is the franchise now better off financially in Texas than it was in Washington?

Answer. It was made known to the Commissioner's Office and the American League in September 1970 that the Washington Senators were in serious financial difficulty. The then-owner, Mr. Robert Short, advised that he could not continue to operate the franchise in Washington, D.C. He was prepared either to sell the Club to other interest in order to maintain it in the nation's capital, or to retain and relocate it. The League responded to Mr. Short by establishing in June 1971 a committee, composed of the Commissioner, the President of the American League, and the President of the Washington Senators, to evaluate all possible solutions to this situation.

In the months which followed, the Commissioner and the President of the American League made extended efforts to find a satisfactory local purchaser for the Club. The Commissioner, in particular, devoted his efforts to this end, meeting with more than sixteen major companies and other individuals in an unsuccessful attempt to interest each in a purchase of the Washington Senators. Finally, at a special meeting of the American League, held in September 1971, presentations were made by two Washington-based groups regarding the purchase of the Senators. Neither group, however, possessed the resources adequate to assure that the Club's operations would become and remain financially viable.

It was only after the exhaustion of all known avenues which would have kept the franchise in the District of Columbia that the American League voted to approve the sale and transfer of the Washington Senators to the Dallas-Ft. Worth area.

⁴ See *Los Angeles Memorial Coliseum Commission v. National Football League*, No. 82-5572 (9th Cir. Feb. 28 1984).

It is of course not possible to make an accurate comparison between the financial condition of a team today and that of one twelve years ago—the economic realities of professional sports have changed dramatically. Nevertheless, even though the Texas Club has undergone two changes in ownership since its move from Washington, D.C. and has not challenged seriously as a pennant contender, its operations are now well financed and it is in no way subject to the kinds of serious fiscal problems—including questions as to its ability to meet its debts as they mature—that affected the Senators in 1971.

Question 2. Are the American League and the Commissioner's office presently involved in any efforts to ensure that the Minnesota Twins remain in Minneapolis? If so, to what extent. If not, at what point would they become involved?

Answer. It has long been the policy of the Commissioner and the two League Offices to support the stability of franchises in their home cities. As long as Baseball is subject to its own internal rules of governance rather than to antitrust liability, then when a Club is offered for sale, an application for transfer to a new location will almost certainly not be approved if a fair purchase offer is available in the home city, on terms giving reasonable assurance of a successful operation there.

In Minnesota, negotiations are currently in progress, between a prospective Minnesota purchaser and the Club's shareholders, which would, if successful, retain the Club in Minneapolis. In the meantime, the Commissioner, the President of the American League, and the other League members are in agreement that the proposed sale by a minority shareholder of his stock interest in the Twins to Tampa interests should not be approved.

Question 3. What is Major League Baseball's position on the allegation that there is currently an artificial scarcity of teams in baseball? Are there any plans to expand the number of teams in the next five or six years?

Answer. Baseball is actively considering plans to expand the number of teams in the next five or six years. At meeting this past winter in Nashville, Tennessee, Baseball authorized its Long-Range Planning Committee to examine the feasibility of expansion. Although the Commissioner has stated that Baseball needs to solve its current financial problems before expanding further, it is anticipated that there will be some expansion during this decade. Any expansion would probably occur in stages, and may ultimately include the addition of up to six more clubs, so that there would be two sixteen-team Leagues. There is not now, however, a specific timetable for expansion and there have not been any commitments made to communities regarding expansion franchises.

Question 4. How many Major League Baseball teams are currently involved in pay television? Are any of the revenues from these ventures shared? What is the future of pay television in Major League Baseball?

Answer. Currently, nineteen of the twenty-six Major League Baseball teams are involved in pay television (which includes both subscription television and pay cable). Each of the two Leagues has its own formula for sharing the revenues from pay television. In the National League, twenty-five percent of certain of the proceeds that a team receives from pay television are shared with the other clubs in that League. In the American League the greater of either twenty-five percent of the revenue that a team receives from pay television, or four cents per subscriber, is placed into a central pool which is then equally divided among all the clubs in the League.

Because of the economic pressure placed on ball clubs—most clubs do not turn a profit—Baseball will continue to explore new sources of revenue, such as pay television. At present, however, pay television has not replaced over-the-air television, but has been introduced primarily as a supplement to it. With the large number of games played by each team—162 during the regular season—Baseball has an inventory large enough to provide an appropriate mix of free over-the-air broadcasts and pay television. Notwithstanding the use of pay television, there has not been any significant reduction in the overall coverage of Baseball on over-the-air television.

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS THERETO

Question. Mr. Fitzpatrick, do you think the 7 million people of the State of New Jersey could support a Baseball team? Do you think the media market is there to provide broadcasting revenues? Then, why is it—as a historical matter—that New Jersey was left out of Major League Baseball?

Answer. Baseball feels quite strongly that New Jersey has not been "left out." Rather, Baseball currently provides New Jersey residents access to ball clubs which they can follow and whose games they can attend. There are three Baseball teams

which are in close vicinity to the State of New Jersey, and are in fact located in metropolitan areas which include portions of New Jersey. These franchises are the New York Yankees, the New York Mets, and the Philadelphia Phillies. Many New Jersey residents are ardent supporters of these teams and it is easy for them to attend many of the home games. Moreover, there is also extensive over-the-air and cable television coverage in New Jersey of the Yankees, Mets, and Phillies. Indeed, the flagship station of the Mets, WOR-TV, is licensed to the New Jersey city of Secaucus.

Question. What are the chances of New Jersey getting an expansion franchise if it decides to build a suitable stadium?

Answer. As I stated in response to Senator Hollings' question on expansion, although Baseball is actively considering expanding the number of teams in each of the two Leagues, there is no specific timetable for expansion and there have not been any commitments made to particular communities regarding expansion franchises.

Question. What is the justification for treating Baseball differently from other major league sports under the antitrust laws?

Answer. Major League Baseball is essentially a cooperative rather than a competitive enterprise. Individual clubs generally do not compete with each other for business; they are partners in a joint operation. Baseball has an absolute need to work together in such areas as franchising clubs; expanding the league; moving teams or keeping them where they are; sharing jointly created revenues from attendance, television, and radio; and promoting competition on the playing field. The way that governance problems get decided is something that affects the success of every team in Baseball, and owners must cooperate to work such problems out of their mutual benefit. Baseball is really one firm and ought to be viewed that way for antitrust purposes.

Those who wish to apply antitrust principles to Baseball display a fundamental misconception of the nature of team sports. Antitrust liability has provided nothing but confusion, expense, and difficulties for other professional team sports. There is no public interest served by subjecting Baseball to the same problems that plague these sports. Football and other sports are constantly tied up in litigation that is expensive and pointless. None of this litigation has improved the internal governance of these sports. There does not appear to be anything that the other sports leagues do that is better for the public than what Baseball does, because they are under the antitrust laws and Baseball is not.

Indeed, one quite counterproductive result of imposing antitrust liability on sports because of their league voting rules would be to make them *less* responsive to what the public really wants. For example, Baseball's present requirement of a three-fourths vote to authorize a franchise move works in the interest of stability that is fair and equitable to fans that have supported their local teams. Because identity with a locality for an extended time builds fan interest, there should be a strong presumption in favor of, and a commitment to, franchise stability. These are the types of practical judgments that the members of every sports league share together when they decide collectively what kind of rules they will abide by; and all sports league rules are weighted in favor of protecting the fans in existing franchise areas.

A second consequence of imposing antitrust rules on Baseball would be to place a cloud over the power of the Commissioner and the League to police and discipline the participants in the sport, in the interest of protecting its integrity, and promoting and protecting the kind of equality on the playing field that is its lifeblood. Surely that would not be in the public interest.

The net result of imposing antitrust liability on Baseball would be to transfer complicated sports issues to courtrooms to be determined by judges and juries. Today, Baseball resolves internal dissensions and disputes by our long-accepted procedures, relatively quickly and relatively inexpensively. In so doing, Baseball has not abused its antitrust exemption. To impose antitrust liability now would expose Baseball to a significant number of lawsuits—many of which would undoubtedly be nuisance suits—and that means very substantial costs and uncertainties.

In short, over a 60-year period Baseball has developed workable and fair governance rules, without expecting that they might be challenged by antitrust laws that really were not fashioned for sports. It may well be that on the issue of "symmetrical" antitrust treatment for all major league sports, the case can be more powerfully made that, especially with collective bargaining questions now squarely within the regime of the labor laws, the other sports should be treated just as Baseball is today.

Senator GORTON. Thank you all. Each of you has been very enlightening and has been a real help to us. And we will have some questions.

Mr. Rozelle, has there been any discussion among league members or any tentative recommendations developed by the commissioner's office since the recent ninth circuit decision on the subject of a new rule relating to team location which would meet the test of that court decision?

Mr. ROZELLE. There has been no ~~formal~~ guidance from the courts. We could try another rule. We changed our rule from unanimous consent of the clubs going into another team's home territory to three-quarters, our normal vote on other issues, 21 votes. We have no guidelines now. The courts are making them. There are different views the courts have shown in sports cases all over the country.

Senator GORTON. In other words, you do not think that what the ninth circuit said is sufficiently clear to allow you to write a rule that you would feel comfortable with?

Mr. ROZELLE. Definitely not.

Senator GORTON. Does that mean that until such time as the Supreme Court has reviewed this case and/or such time that Congress has taken some action that you simply are going to have to take the handsoff position on franchise moves which was illustrated in the Baltimore situation?

Mr. ROZELLE. As I explained earlier, the tools to try and do something have been taken away from us. We were successful for two decades that I have been commissioner, and before that it was with Commissioner Bell. But we do not have the tools. They have been taken away. And we just cannot financially risk another \$50 million that we hope to overcome in the courts.

Senator GORTON. Of course, as you point out, you run a risk by doing nothing as well.

Mr. ROZELLE. You do. Either way you can be sued.

Senator GORTON. How many of your members' stadium leases will expire in the course of the next 5 years?

Mr. ROZELLE. I think there are somewhere between three and five.

Senator GORTON. So at least there is a potential of the same problem in those cases in that period of time.

Mr. ROZELLE. Yes, sir.

Senator GORTON. What analysis does the league go through in determining whether or not to expand, and when an expansion has been proposed how to judge among competing applications?

Mr. ROZELLE. We have a professional organization research the different areas under consideration and give us their views on the population, stadium, sports interests, climate—all the things you would take into consideration. We would do a tentative survey to be certain that there would be appropriate ownership available. As in the case of your State, Seattle, we were very fortunate to get the prominent Nordstrum family involved, and that is what we want. We try to get local ownership.

So we use all sorts of criteria in setting up expansion franchises and in judging one city against another. The last time also got a suit. In 1974 we wanted to expand, and during 1974 when we were studying various cities, including Seattle and Tampa Bay where we

ultimately expanded, the then-World Football League sent us a wire because it was mentioned that we were considering Memphis, TN, and the Memphis team wired us if you come in here, we will view it as a violation of the antitrust laws, attempting to hurt our league, so we will sue you.

We picked Tampa Bay and Seattle. Six months later the World Football League folded, and the owner of the Memphis team, John Bassett, said well, we have a team here. We are ready to come into the National Football League. And we said well, we already expanded by two, and they take the field in 1976. We do not go for multiple expansions. Two is plenty at one time so you do not get dilution. And he sued us, and we won a summary judgment in the Philadelphia court, and it is now before the Supreme Court—an other example of damned if you do and damned if you do not. They said do not come in or we will sue you. We do not come in, and then they sue us anyway.

Senator GORTON. Do you believe that Congress should deal with this question of cable and pay TV agreements, as well as with your present television sharing agreement, and specifically validate them by legislation?

Mr. ROZELLE. I think it has to be considered in light of the internal challenge that can be made. At this time we have 27 teams agreeing with my interpretation of equal sharing of all types of television revenue, and one suggesting that they will not, or they might go some other way on the cable or television situation.

Senator GORTON. Does the National Football League believe fundamentally that broad antitrust exemption for a league rule on team relocation is sufficient to address the concerns of cities, affected cities like those which appear before us this morning?

Mr. ROZELLE. I think our track record of 20 years indicates that the league can, as baseball has indicated their position, that they can accept that responsibility.

Senator GORTON. And that that is sufficient, the cities ought to be content with it?

Mr. ROZELLE. I think if we show that we are not responsible, things can change in a hurry.

Senator GORTON. Mr. Ehrhard, would your answer to that question be the same?

Mr. EHRHART. Well, we are in just a little bit different position. In my written statement I talked about the time period of the 5-year exemption, so to speak, and my only question would be whether it is tied to time or whether it should be tied more to the financial abilities and the circumstances of the team.

I think that is what I would like to see addressed more than just strictly a 5-year or 3-year or 8-year, whatever it is.

Senator GORTON. Mr. Rozelle, at the time that the league rule on relocation required a unanimous vote, what type of consensus was required for expansion?

Mr. ROZELLE. Three-quarters, 21 votes, but unanimous if you were going to expand into a city that then had an NFL team. But that was changed to be three-quarters rather than unanimous. So for expansion or for a team shift we require a three-quarters vote, 21 clubs.

Senator GORTON. Mr. Ehrhart, does your league share television revenues in the way the National Football League does?

Mr. EHRHART. Yes. On revenue sharing, we are in a very similar situation to the NFL.

Senator GORTON. Mr. Fitzpatrick, major league baseball does not do so. Can you tell me what the rationale is for your failure to do so? Do you not build in the same kind of inequality?

Mr. FITZPATRICK. We do so and we do not do so. Our national television revenues are shared equally. Our local television revenues are not shared, and I think that is a matter of history. Baseball has been on the radio for many, many years. As television came along, judgments were made that the national television revenues would be shared equally. National revenues are, of course, a significant amount; the communications revenues are essentially 50-50 between national and local revenues.

Senator GORTON. Is this an open and debated issue within major league baseball; that is to say, the extension of that rule to local television revenues?

Mr. FITZPATRICK. There has been a lot of discussion over the course of the years as from baseball's point of view what is the most effective way of marketing its product. We have a different format than football does. We have many, many more games over television. We have almost 1,500 games that go over the air. And the judgment up to this point has been that the balance between the national package and the local package is appropriate.

One thing that is quite clear is that, with local clubs televising and satellite redistribution of our games, no one is left with too little baseball around the Nation.

Senator GORTON. I think that is true. You do, however—I think you point out in your own testimony that there is always going to be a strong competitive edge with respect to broadcast revenues under your present rules for larger cities as opposed to the Seattles and Milwaukees and so on; is there not?

Mr. FITZPATRICK. Certainly there will be communities that are larger television markets that will, by their nature, be able to offer a more attractive television package.

Senator GORTON. I do not know, Mr. Fitzpatrick, how long you have been associated with major league baseball.

Mr. FITZPATRICK. Since 1961.

Senator GORTON. Well, maybe I should be less charitable in my next comment; that under those circumstances, your statement on stability does not register perhaps with the Senator as strongly as it may with others. The move from Seattle was highly arbitrary, and you expanded to Seattle only after extended litigation in the face of an imminent jury verdict, which as far as I could tell was going to vote capital punishment.

Mr. FITZPATRICK. I think that your perception of that situation is well known on the record, and we have had some disagreements in terms of the financial package that was put together in terms of the first Seattle franchise.

Senator GORTON. I do not need to go into that. That was really meant as the basis for a question, and the question is: What comfort can there be in your comments in that respect for a city from which a franchise moves with the approval of a league?

Do you think the cities are going to be content simply to have all power with respect to franchise transfers handled by the leagues of major league baseball as a whole?

Mr. FITZPATRICK. We have been exercising this authority with an antitrust exemption over the course of many decades. Given the history of our efforts in terms of insisting that there be local financing as a substitute if that can be made available in the first instance, we think that cities under our approach have received a fair shake.

No one should avoid the fact that any mayor who loses a franchise in one fashion or another is going to be terribly unhappy, and any mayor that gains a franchise is going to be terribly happy. I think that the Colts came to Baltimore out of a bankruptcy in Dallas; the Brewers came to Milwaukee out of a bankruptcy in Seattle; Oakland's baseball team had come from Kansas City.

The history of this process in baseball has been one where, over the course of decades there have been some franchise moves, but we know of no city, with the exception of Washington, that has had baseball that over a period of time has not regained baseball. We think that we have been responsible and responsive.

Senator GORTON. Let us speak to the current issue which is before us here this morning. How would the Minnesota Twins go about getting league approval for relocation?

Mr. FITZPATRICK. They would have to secure a three-quarters vote in the American League. They would have to secure a majority of the owners in the National League. And they would have to secure the consent of the commissioner of baseball or the implicit consent, his nonveto. The commissioner has the authority to make judgments in the best interest of baseball.

Senator GORTON. Have there been any moves, tentative or temporary or informal or the like, on the part of the Minnesota team to deal with other members of the league with respect to a proposed transfer?

Mr. FITZPATRICK. I am not aware of any.

Senator GORTON. Finally, I would like, if I can, to ask each of the three of you here if you would be willing to submit a copy of the rules¹ under which the respective leagues operate, if they will.

Senator Long.

Senator LONG. Mr. Rozelle, some of your decisions have been controversial, as they necessarily must be. In fact, I must say that one decision you made cost me a very influential friend. But I still think that you are doing the very best you can to do your job fairly and to do what you think is best for the league and the best for all concerned, and I think you are doing a good job, even though it may cost me a few votes in some sources.

Now, I recall a decision you made one time that I believe there must have been a football player named Parker who was hired as a free agent in New Orleans, and I believe that you made the decision that because the team, the Saints, did that without the consent of the league that they would not get their first draft choice or some such thing the next year. And you issued a statement explaining that.

¹ The rules were submitted as requested and are in the committee files.

You said that there had been a previous league, not yours, but a previous league had tried to make professional football go, and under that league's rules, they could do pretty much what they wanted to do about obtaining players, so that one team with superior financial resources just hogged up the best ballplayers, and so that the competition so diminished among the others that the one team was completely dominant, and people just did not feel like going out and seeing that one great team trounce all the rest of them every weekend. And so all of the other teams dropped by the wayside, and eventually that one outstanding team had to go under, too, I suppose, because the others could not compete.

Now, it seems to me that the logic of that situation is pretty much dictated or does dictate, I think, what you are suggesting now: that all of the TV revenues should be shared by all the teams.

Mr. ROZELLE. Continue to be shared, as they have in the National League since 1961.

Senator LONG. Yes, but that if one team went to pay television with a local audience—for example, suppose the Los Angeles team went to pay television—and they have got a great team, after all—if they went to pay TV in their own local area, and then that revenue were not shared, they would have a great deal more perhaps than other teams.

Now, is there any limit on what teams can pay their players other than the judgment of the owners? In other words, is there any limitation as to how much an owner can pay a ballplayer if he is doing a good job?

Mr. ROZELLE. I think we have a similar situation to what they have in the U.S. Football League; and as Steve knows, the sky is the limit, with Steve Young as an example, the quarterback from Brigham Young.

Now, it is important to share the money equally so that the teams can compete and that we can have competitive balance. It is very important. If you have one or two dominating, it ruins the league.

The case—just as an aside—the case you brought up was when we had a rule requiring the Commissioner to determine compensation if a player who played out his option signed with another team. The player you referred to was Dave Parks, an end with the San Francisco 49ers who finished his option and signed with New Orleans.

I was required under the constitution as it read at that time to determine what compensation would be paid by New Orleans to San Francisco. It was always an unpleasant job when I had to do that. I lost several friends among the owners myself that way. But that has been changed since through collective bargaining, and I am no longer in the middle. And they have a set formula concerning draft choices that will be exchanged in similar instances.

Senator LONG. Well, I am not really concerned about that particular event. I just used that by way of illustration, however; that if one team has far superior financial resources, it can find ways to use it, even within the rules that you have. For example, if you are not able to limit what any team can pay for a player who is playing year by year under contract with that team, teams can find ways to exploit that advantage, can they not?

Mr. ROZELLE. They certainly can, and they are doing it.

Senator LONG. Now, I do not know whether you want to even comment on this, but I have had the impression with regard to a couple of situations with which I am familiar, or at least I read about it and I have an impression because I have discussed it with people, that there have been cases where a ballplayer would like to play somewhere else, and the owner would like to have him, and the coach would like to have him. They feel they can make him a better deal, and he would feel he would be better off if he was there.

Now, it is within a fellow's ability to just not do a very good job for a team where he is where after a while they get the idea that if they keep that man under contract, he is not going to play the game for them anyway, so that is a waste of money. So they might as well go ahead and trade him on off until he gets to where he wants to be.

Now, at that time, from that point all of a sudden he becomes a great ballplayer. He realizes his potential all of a sudden.

And I see some people snickering in the room who know something about football. But that is how it can work and how it tends to work. So that if one city has the resources to do this thing, let the guy know look, we want you here, and we will pay you more than any ballplayer in America is making perhaps, they have got a good chance to eventually work it out to where they get that ballplayer even though you try to prevent that type of thing from happening in the interest of uniformity, to give everybody a chance and all of that.

I am just saying that if you cannot limit what the team can do to reward a player who is doing a good job for the team and you let one team have so much more resources financially than the others and put it to use, in due course that team tends to be the dominant team.

Mr. ROZELLE. They have a much better chance of being the dominant team. The only condition we have on player salaries is as a part of the collective bargaining agreement we made with Mr. Gene Upshaw and the Players Association. The owners are obligated to pay the players in salary a total a \$1,600,000,000 during the term of the bargaining agreement, but there is no cap on it. The owners have to pay at least that much. And I assure you there will be no shortfall, Gene Upshaw. It is going the other way.

Senator LONG. Well, now, I am one of those who suffered with a losing football team for a long time, and I have not cussed you for it for a moment. I have not blamed you at all. I might have complained from time to time, but my thought is that eventually we will have a good ball team, and we will be able to win our share of the games and have a winning team some day, provided that we can have an even break with other people in the material that we can have and what we can pay and things like that. And the same thing goes for everybody else in the business.

That is why I think that if we are going to pass this legislation—and I think we ought to pass it—that we should not miss this opportunity to try to require that the revenues be shared.

Now, that would still leave the team in a large metropolitan area like New York with an advantage. They could sell more caps and

more jerseys, and they could raise more money in some ways. But it would tend to make it sufficiently level so that all things being equal, and generally speaking, that the lucky draw would be most teams have the chance to be champion at some point.

Mr. ROZELLE. That is the reason for many of our rules and why I would agree with you on that point. At least you give every club the means to be successful. The rest of it is coaching, ownership, management, the players. But they have the means to be successful and the means to acquire the talent, the financial means, as you suggest, with the equal sharing to pay that talent properly.

So that it comes right down to the coaching and management and the players as to who wins the games. And, of course, that is what sports is all about. It should not be determined just by money, being able to go out and buy a football team that will beat everyone else.

Senator LONG. Of course, if it gets to where one team had all of the advantages, people do not want to go out and see an unequal contest. They do not care to go out and see some great team stomp some poor team that has no talent and no chance. They would like to see a fair contest.

And had it been your thought—and you have not said it directly to me, but I have heard that you said on occasion that if you could, you would like to see the talent so evenly divided that on any given Sunday, the lowest team in the league had a chance to beat the top team.

Mr. ROZELLE. Absolutely. I stole that from my predecessor, the late Bert Bell, but I firmly believe it. And when the public realizes that there is that chance, they are going to go to the games, and they are going to watch it on television. When they question whether there is any chance of that happening, they are not going to do it.

The element is very important, the competitive element of, one, watching the entertainment, and two, there being doubt as to the winner.

Senator LONG. It is many times I watch a golf match, and if a fellow is way out by five or six strokes, I might wish he would bogey a few holes just so that it gets to be more of a contest.

Do you have any feelings on that, Mr. Ehrhart? Do you in your league generally feel that about trying to survive in the talent so that each team had a chance?

Mr. EHRHART. Absolutely. In fact, it is a little bit different in our league where we are still yet building tradition and resources. Quite frankly, it has been tougher to get ticket sales in some of the bigger markets because there is so much more competition. So quite frankly, we have some of the reverse problems; that the bigger markets are not drawing as well initially in the early stages as, say, the smaller markets like Jacksonville or Birmingham.

But in the long haul I definitely agree with the thesis that we have to have the ability of all clubs to compete and have the tools to build a winner at any given time.

Senator LONG. Is that your attitude, Mr. Fitzpatrick?

Mr. FITZPATRICK. Certainly baseball has procedures built in terms of drafts that try to equalize talent, and we are all interested in having all clubs present a very competitive showing.

Senator LONG. Well, it used to be so that the Yankees would have so much more material than everybody else, but it has not been quite working out that way lately. But do you think that baseball now has such a basis; that all the teams have a reasonable competitive chance?

Mr. FITZPATRICK. Well, I do not know that one can say mathematically that all teams have exactly the same chance. I think it is very heartening if you look over the last 4 or 5 years to see who the pennant winners are and who the World Series winners are; we have been having a lot of competition and many that have been up in the standings. And from baseball's point of view, that is exactly what we want.

Senator LONG. Thank you very much.

Senator GORTON. Senator Kasten.

Senator KASTEN. Thank you, Mr. Chairman.

I would like to associate myself with the views of the distinguished Senator from Louisiana.

First of all, I think this has been an extremely important hearing and an important panel, and all of us have learned a lot. But I think the key issue of franchise stability is going to be dependent on giving football and other sports the kinds of additional antitrust protection that they need. And without the tools, whether it is the NFL or the new league or others, without the tools we are simply not going to have the kind of competitive situation that we all want.

And if we can as part of this legislation—I interpret this legislation as a step toward an additional exemption or an additional antitrust protection, if you will; but I am not sure that we have gone far enough. And I would agree with the Senator that clearly on the question of media sharing, if there is a way that we could include a part of this legislation some media sharing so that we define media in the way that the National Football League majority or overwhelming majority is now defining it, I think we could be taking a strong step in the right direction in terms of helping the basic goals that I think we are in strong agreement with.

I think that to have football and other sports in the position of being damned if you do and damned if you do not is in the end going to be bad politics and bad policy and a bad direction for the country to go in. So I hope that we can go forward.

Mr. Fitzpatrick, if I understood, you, of course, have this antitrust protection that the others needed, but did you disagree with the legislation because it sets up this additional group of arbitrators, or are you simply suggesting that you feel that that additional group of arbitrators would take away somehow some of the ability that you now have as a league?

And I am sitting here as a person who won the battle for the Brewers, but we won the battle for the Brewers because we had just lost the battle for the Braves. So I have kind of been a receiver and a giver in this area. And, of course, we have a wonderful and a very exceptional circumstance in Green Bay where the owners of Green Bay are the people of Green Bay, and the Green Bay Packers are going to be in Green Bay. Without this shared media concept, the people of Green Bay certainly would not sell the Packers, but Green Bay would not be able to have players over a couple of

years if in fact this whole media idea is not worked through. That would be the case for all but four or five cities. It is just a matter of where we draw that threshold year by year by year until we get to New York and Los Angeles and one or two others. Then I think the league would collapse, and I think that everyone would be losers.

But I just want to understand major league baseball's position in terms of this panel. You are not against the legislation, and we certainly do not in any way want to affect your antitrust protection, and we are not substituting a group of arbitrators for your ability right now to try to deal with the problem.

Mr. FITZPATRICK. On this record and based upon our experience, we do not think the additional layer of governmental arbitration is necessary. So I want to be clear. Obviously, if the committee—as Mr. Rozelle indicated, everyone is quite anxious to talk through standards. But we have a serious concern about the concept of adding governmental arbitration as the final step in addition to league procedures.

Senator KASTEN. Now, I think your term “final step” might be important. There may be room for an arbitration group, but not as a final step; is that what you are suggesting? You do not think the arbitration group has a—or you do not think the arbitration group has a place at all?

Mr. FITZPATRICK. Based upon baseball's experience exercise our authority for decades, we do not think the case is made to subject sports to Department of Commerce arbitration review with standards. What this bill does—and it is important, I think, to understand the model here—you are saying the league can approve it, but then the final say is ultimately in an arbitration board, a non-judicially reviewable arbitration board in which the Secretary of Commerce would appoint the key member. And that is a profound and important institutional step in terms of the Federal Government and its relationship with cities and sports. We are doubtful that that step is needed and in the public interest.

Senator KASTEN. I thank you, and I thank the Chairman.

Senator GORTON. Senator Heflin.

Senator HEFLIN. Mr. Rozelle, Senator Gorton asked you about the handsoff position that you are taking pertaining to a proposed move today. But from a hypothetical situation what would happen if the courts were to rule that the antitrust laws that now exist prohibit the owners of the league from taking league action as a group to make the determinations of that kind, what would be the scenario? You would have no control whatsoever over a team's movement or where teams would be located. Would it strictly be up to one team owner as to where he wanted to go?

Mr. ROZELLE. It is that and far more. We do not want to be relieved of the antitrust laws. We will accept them like General Motors. We will accept them like Chrysler. We will accept them like Ford.

We are willing to be accused of price fixing, monopoly, everything else. But our problem comes about that we are not treated as a Ford; we are treated like a Ford, a Chrysler, a General Motors, 28 different entities.

Now, theoretically anyone within or without could challenge as a conspiracy a league meeting. Now, this decision makes that very

clear. In the *Raider* case that we are appealing, just by having a meeting it would be like General Motors, Chrysler, and Ford getting together and having a little talk.

Now, if they have that little talk, I am sure the enforcement officials would certainly want to know what they had that little talk about. In our case, any decision we make, if this thing holds up, can be challenged.

Senator HEFLIN. In my judgment, the entity that you occupy is more of a partnership than a corporation. Let me take this antitrust issue a little further. You and Senator Long both mentioned pay television. If pay television were to prove profitable to one league, it would mean that an owner might go into that entirely, and I do not know whether people understand pay television, but compare it to a boxing match. You have an auditorium. You charge \$2 or \$3 for people to fill up a big auditorium.

If that brought in more money, in effect it would mean that since you could not take action, that that team may never appear on a network or on television. It goes back to what Senator Long is talking about where they are trying to have the individuals visit the team, and where today they see it on television. Unless they are willing to pay that money, they could not see it in their home.

Give us the facts or the position that you would be placed in under the antitrust laws as it would apply to a situation where it would prove profitable to one or two teams to consider the possibility of moving, regardless of the expiration of the stadium lease or not.

Mr. ROZELLE. If it is of value to a club—and let us use the Raiders as an example, because they are the ones that have questioned the equal sharing of revenue—they would go on, say, pay cable, all their home games and road games in the Los Angeles area. And once it opens up, we have no control.

Now, you asked baseball earlier why they do not have more control. We were lucky. We got ours in 1962 where they all agreed to share the television and go in on a package. They have been operating since before the turn of the century, and they had—the Mets and the Yankees were sold at a certain price, and they said well, we bought those on the basis that we would be able to use this cable and so forth.

But in our case, if one club wants to break it up, the scenario would be this. Say the Raiders do it. They say you sign all the contracts you want with ABC, CBS, and NBC, but do not sell me. You do not have the right to sell me. It is against the antitrust laws. I am going to make my own deal on cable. I am going to have my home games in this market in Los Angeles on a pay cable system.

Then the next step will be that will be the break, and then Dallas will say—and I use them as an example because they are one of the more popular teams—and you might say Washington with Mr. Cooke's experience with cable, say Washington—they will make a deal with HBO. They will say well, do not include us in those commercial packages you are making, because we are going to be on HBO, all of our games. And then Rankin Smith down in Atlanta, Ted Turner's hometown, he makes a deal with Turner. I am going to be in the Turner WTBS, the station that goes up on the satellite from Atlanta. I am going to be on that.

All I can say is by the time you get three or four of our better teams doing this, there is not going to be much room for that little team in Wisconsin, I assure you. There will not be room for Green Bay. There will not be room for the Vikings. There are a lot of teams that will only have their local market, and they will get peanuts from that money. They will not be able to piggyback on the package concept and get the value out of the big cities contributing as they are now.

Senator GORTON. Senator Long.

Senator LONG. Mr. Rozelle, you have undoubtedly heard about the talk of moving the New Orleans Saints over to Jacksonville, FL, or perhaps somewhere else. And I would appreciate whatever you can tell us about that. You can tell us about your knowledge of it or your view of the situation.

One, do you think it is likely? And two, what do you think the league's attitude would be?

Mr. ROZELLE. One, the league can't have an attitude at this point. We would have to treat it as we treated Baltimore, saying Mr. Irsay, you make your best business judgment taking everything into consideration, including the league, but we are not going to take a vote and say yes or no. We would not take a vote on New Orleans. They have said that they do not intend to move. They intend to stay in New Orleans. I sincerely hope that they do. I think it would be a shame if they left.

Senator LONG. You are talking about New Orleans, and you said Baltimore, but I was asking you about New Orleans.

Has the Saints owner said he intends to stay in New Orleans?

Mr. ROZELLE. He has said that, yes.

Pardon me. Then you asked me what do I think is going to happen? Damned if I know. I thought I knew what would happen with Al Davis wanting to go to Los Angeles. I thought that if the league voted and said that he could not go, he would stay in Oakland. But he did not. He went to court instead.

Senator LONG. Because here is the thing I have in mind. The people down there made commitments to you and to this league when you franchised New Orleans. I thought that the Governor of Louisiana was a little bit expansive when he suggested at that time that if you would locate the franchise in New Orleans that he would build a domed stadium so big that you could put the Astro-dome in the end zone. I did not think we needed a stadium quite that big. I do not believe you did either. But at least we proceeded to build a much bigger stadium than anybody had, and it cost about \$200 million, and we will never get our money back on that, but we are not complaining about that. It has been an asset to the city, as long as we have somebody to play football there or attract some crowds, even if only once in a while.

But on other occasions he has suggested that certain things ought to be done, and I think the local authorities have tried to comply. If you have any complaints, why, we would be pleased to hear them.

But in the main, I think that you would probably have to give this city good grades on complying with what you said would be expected of the local people there under various circumstances. And I would have no doubt—in fact, I wish you would tell me what your

thoughts are—that if the league had the authority to take into account the fact that the local citizenry and the local governments, State and city, had done their part in a deal that was supposed to be mutually beneficial, that they would not be left without a franchise if the league had any power to protect them. But if you do not have any power to protect them, I do not know how you can do anything but just sit there and say well, gee, that is too bad.

Mr. ROZELLE. You are absolutely right, Senator. We have a \$50 million binding right around our wrist, our collective wrist. And we have been told by the ninth circuit we cannot take public interest into consideration. We were told that by the court in Los Angeles. You cannot consider public interest concerning the move of a franchise.

Senator LONG. In other words, if I understand it correctly, the court has told you that your owners owe Mr. Davis \$50 million because your owners tried to protect the people in the Oakland area because they thought they were entitled to some consideration?

Mr. ROZELLE. Yes, sir.

Senator LONG. And you would be subject to the same kind of liability if you tried to tell the owner of the Saints that he could not move away from there if he decided he wanted to move?

Mr. ROZELLE. Absolutely correct.

Senator LONG. Now, if people there want to protect their own interest, they would want you to be in a position that you could act in their behalf to keep the faith rather than be without any right to do justice as far as the league is concerned.

Mr. ROZELLE. Yes, sir.

Senator LONG. Thank you very much, Mr. Rozelle.

Senator GORTON. Mr. Rozelle, I have one more question of you.

You heard Mr. Fitzpatrick's answer to Senator Kasten to the effect that major league baseball did not want any outside intervention at all under any circumstances, feeling that it was totally—league control over franchise moves was totally sufficient. Do you subscribe unreservedly to that view, or do you find less objectionable an arbitration requirement which would provide for a reflection of the interest of communities themselves?

Mr. ROZELLE. I explained just briefly in my statement we have concern about several aspects of the mechanics; that would be one. But the lameduck aspect, I do not think that would be good for a team and even the city, the fans of the city, to have a team, while this arbitration procedure was going on, staying as a lameduck during a full season. We have some concern about the details of that procedure, but I did not want to go into that. I thought it would be better for us to write them to you and for our staff to work with you rather than to try to go over them now.

Senator GORTON. Thank you. That is quite a sufficient answer.

And again, I would like to thank all three of you for most enlightening testimony and for great help to the committee.

Senator LONG. Let me just ask one further question, Mr. Chairman.

Mr. Rozelle, I did not pin you down on the particulars, and I do not think you were trying to be evasive; but would you tell me whether or not you think that the community in New Orleans and in Louisiana have in good faith done what was expected of them

having a franchise in their area, and are they deserving of a continued franchise there?

Mr. ROZELLE. Unquestionably. And that is one of the reasons why we put the Super Bowl there. It is one of the finest facilities and one of the finest football cities in this country.

Senator LONG. And I take it that you would use your influence as a commissioner in talking to other members that they should continue to have a franchise, if you had the power to do anything about it.

Mr. ROZELLE. Yes, sir. I can assure you.

Senator LONG. Thank you very much.

Senator GORTON. Our last panel, which has been very patient, will consist of Mr. Gene Upshaw, executive director of the National Football League Players Association, and Mr. Don Fehr, acting executive director of the Major League Baseball Players Association.

Mr. Upshaw, you may proceed. And again, I would like to emphasize that your written testimony will be included in the record as if read, and given the time, we would appreciate a summary.

STATEMENTS OF GENE UPSHAW, EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION; DOUG ALLEN, EXECUTIVE DIRECTOR, U.S. FOOTBALL LEAGUE PLAYERS ASSOCIATION; AND DON FEHR, ACTING EXECUTIVE DIRECTOR, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Mr. UPSHAW. Well, given the time, I am still awake. I have gotten a lot more interested. It seems as if there are a lot of people that already understand my position when I have not stated it yet, and those people are from my home area of Oakland—the mayor and the Congressman. And they have stated my position which, for the record, is not correct.

I would like to introduce Doug Allen, who is the new executive director of the U.S. Football League Players Association. And I also appear today on behalf of the Federation of Professional Athletes. That includes the North American Soccer League Players Association, the Major Indoor Soccer League Players Association, the NFLPA, and now the U.S. Football League Players Association.

I must say that the last time we appeared before a congressional committee we were going through a tremendous upheaval in professional sports. I was one of the players that was leading that charge, and we were saying we are the game. I look back at that now in retrospect and say that I now believe that I was misinterpreted; that there are three important elements to the game. We have the owners, we have the players, and the fans.

As far as the fans go my heart goes out to the city of Baltimore. It goes out to any city that might lose its professional team, regardless if it is football, baseball, soccer, hockey, or basketball. The players are very concerned about stability. It is in their best interest that a franchise be stable, because they invest in the community, they live in that community, and they would like to, when their playing days are over, pursue a career in that community.

I know the city of Baltimore is suffering. As I say, I played 16 years with the Oakland and Los Angeles Raiders, and I experienced what has gone on in the city of Oakland. I have a business in

the city of Oakland even today. And I know what that city has gone through.

Also, I have a lot of problems when I look at the legislation. As I said, we have not made our minds up, but we are concerned. I am very concerned when I hear some of the testimony that I just heard from the NFL. When we are talking about protection of the fans and the cities, and what is good for them, we agree with that goal. But when I hear testimony that sort of piggybacks other legislation granting antitrust exemptions, I become concerned, and I am here to express those concerns.

The antitrust exemption that the National Football League already has, and it is stated very clearly, applies only to free TV. We believe that the players have to have a voice in any change in antitrust exemptions. We think that S. 2505 is on track. We agree that it is a good start.

You are concerned, as we are, about the protection of cities and fans. But we feel that granting any more power to a group that has enough power already, under the guise of protecting the fans and the players, would be wrong.

I could go on. I will yield a portion of my time to Doug Allen, who is the executive director of the U.S. Football League Players Association.

[The statement follows:]

STATEMENT OF GENE UPSHAW, EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

Mr. Chairman and Member of the Committee: My name is Gene Upshaw. I am Executive Director of the NFL Players Association. I came into professional football in 1967 and played offensive line with the Oakland and Los Angeles Raiders Football team. I have been an alternate player representative, player representative, vice-president and president of the Players Association. All this is to say that I have had considerable experience both as a player and union officer in the National Football League.

I appear today also as President of the Federation of Professional Athletes, AFL-CIO which represents the NFL Players Association, the North American Soccer League Players Association, the Major Indoor Soccer League Players Association and the recently formed United States Football League Players Association. I am accompanied by Doug Allen, Executive Director of the USFL Players Association, and am proud to say we are affiliated with the AFL-CIO.

On behalf of approximately 1500 professional football players in the NFL whom the Players Association represents, we thank the Committee for its invitation to appear and express our views on S. 2505, the Professional Sports Team Community Protection Act.

The NFL Players Association and its members have a vital interest in the stability of franchises and the economic viability and prosperity of professional football. Our members share many of the same interests and goals held by citizens in the communities in which they play. We believe that community investments and fan loyalty should be respected. Players plan for post football careers in their "home" communities and the stability of a franchise is important in that planning. The experience of team relocation under baseball's antitrust exemption offers little reason to expect that the NFL will act to protect and respect the interests of municipalities. In fact, the NFL has already failed to do so in Los Angeles, New York, Dallas, and Detroit. Such decisions should not be placed entirely beyond the law.

As a part of organized labor, moreover, the NFLPA also shares with the AFL-CIO a commitment to the principle that competition in product and service markets is the best means of assuring that the public interest will be protected. Adding any further antitrust exemption to those already possessed by the NFL and its team owners undermines the principle of free and open competition.

Unlike legislation pressed by the NFL in the last Congress, S. 2505 wisely does not grant further antitrust immunity to the sports leagues. Nor does it entrust decisions on team relocation to the unreviewable decision of the sports monopolies. Im-

licitly it recognizes that conferring unrestricted, unreviewable powers to sports team owners is mischievous and offers no guarantee at all that the public interest will be protected. Instead, the bill proposes criteria and a procedure to restrict sports franchise relocation. Its approach to limiting team relocation appears to be constructive. However, we agree with Senator Gorton, chief sponsor of S. 2505, when he observed that it is unfortunate that any legislation on this subject is needed. We would therefore hope that the entire issue of franchise expansion could be addressed. The NFL's procedures have promoted artificial scarcity and have been responsible for the spectacle of one city vying to obtain a franchise from another city. We fail to see any justification for requiring extraordinary majorities of team owners to approve franchise expansion. Communities and fans that are prepared and able to support major league sports, as well as professional athletes, will benefit if expansion decisions are made by less restrictive voting requirements.

In order to be certain that municipal and stadium authorities are not unjustly dealt with or threatened, however, there may be ways to tighten and clarify the criteria in S. 2505. For example:

We note how the bill is designed to regulate transfers from one metropolitan area to another. However, we suggest the Committee consider an amendment to make S. 2505 applicable to transfers within a metropolitan area if the transfer is to a new community under the jurisdiction of a different government or stadium authority. As you may know, a number of moves have occurred within an NFL team's "home territory", and still adversely affected the "home city". For example, since 1966:

The New York Giants moved to the Meadowlands, New Jersey.

The Dallas Cowboys moved to Irving, Texas.

The Detroit Lions moved to Pontiac, Michigan.

The Los Angeles Rams moved to Anaheim, California.

Most recently—

The New York Jets announced a move to the Meadowlands, New Jersey.

These moves occurred within the "home territory" despite NFL assurances to the Congress that football operations would be preserved where they were being conducted. They occurred without antitrust immunity. What standards governed the League's action? Did it consider the economic impact on the communities involved? Were the teams in financial straits?

A bill introduced by Senator Mathias earlier in this Congress, S. 1078, is designed to regulate the relocation of sports franchises. It applies to team transfers within a metropolitan area and the Committee should refer to its provisions.

Two months ago in the Los Angeles Memorial Coliseum/Oakland Raider case, the Ninth Circuit made this observation which underlines the problem of allowing sports leagues to exercise unrestrained control over team transfers:

"There was evidence to the effect that the NFL in the past remained expressly noncommittal on the question of team movement. This was done to give owners a bargaining edge when they were renegotiating leases with their respective stadia. *The owner could threaten a move if the lease terms were not made more favorable.*" (Emphasis added.)

Los Angeles Memorial Coliseum Com'n v. NFL, 726 F.2d. 1381, 1394 (1984).

The record in other sports is no more encouraging.

We point this out because in a staff revision of S. 2505 entitled "Staff Working Draft", ("Draft") which we have examined, the right of a sports league to approve or disapprove a team relocation appears to be reinstated without any restriction. As redrafted, the bill would overturn the Ninth Circuit decision insofar as allowing the NFL to enforce its present rules. Such language would enable the league to require a three-fourths majority vote which the federal courts in the Raider case have found to be an unreasonable restraint of trade and illegal. (Prior to the Raider case, the NFL required a unanimous vote to permit a team to transfer into another team's "home" territory.) The same courts have rejected the League's argument that it is a single entity and therefore not subject to antitrust scrutiny. With respect to league disapproval of team moves, the Draft does not address at least two concerns of the courts; namely, the lack of any objective criteria and the absence of any procedures to ensure fair consideration of such criteria.

We oppose any legislation that would simply reinstate League control over team relocation unless it was subject to antitrust scrutiny. Any statutory language which purports to reinstate league controls and vitiates the antitrust decisions of the federal courts would be contrary to the interests of fans, the communities, stadium authorities and the players. We urge this committee not to disturb these decisions by legislation. It would be a serious mistake for Congress to send a signal to the courts that the League may enforce restrictions on team movement without satisfying antitrust requirements. We think the Draft makes that mistake by reinstating League

authority without spelling out what standards are to apply and what procedures and votes should govern.

Similar extraordinary majorities govern league expansion and the approval of collective bargaining agreements. We suggest that the industry be forced to justify the extraordinary majority vote as the least restrictive available means to protect the industry. Overall, we ask that Congress undertake a deep and thorough analysis of the present structure of organized team sports, the system which restricts players and their ability to sell their services, imposes artificial scarcities, and which possibly impedes collective bargaining through the imposition of an extraordinary majority vote to approve any collective bargaining agreement. Those persons who justify the present system by allegations of financial ruin or internal chaos if changes were to be made, should be asked to supply evidence or other factual data to justify existing anticompetitive practices.

Also, the Draft includes a broad definition of broadcasting, which includes cable and pay television. To some the definition may imply that sports teams or their leagues possess authority to pool their broadcast rights and revenues to cable or any form of pay television. That is not the case today. To keep the record clear and avoid any such improper implication, we suggest that the definition be deleted. However, if the definition is retained, any implication that sports teams in concert or their leagues possess such pooling rights should be expressly disavowed.

Also, it is not clear in S. 2505 or in the Draft whether the rights of stadium authorities or city governments which have long-term lease commitments from sports teams will be preempted by the legislation. The committee may wish to obtain information from the league as to the remaining term of all leases of NFL teams in gauging how to deal with the rights of lessors. We think that any rights that obtain under existing leases should be expressly preserved and not displaced by this legislation.

An examination of the Arbitration Board procedures suggests certain areas in which the bill may be tightened and clarified. For example, if the Board is to compile an accurate record of financial condition it should have subpoena powers and the authority to take testimony under oath. If the Board finds that a claim of financial hardship is unwarranted, it is not clear under the bill that it lacks authority to approve a move. Likewise, if a team has failed to establish financial hardship, should an offer of retention still be required before the Board can disapprove a move? We believe this should be clarified. The Board should be authorized to hire staff and it is probably preferable that the public member not have any interest, direct or indirect, with professional sports. Also, the bill should clearly indicate that players and their collective bargaining representatives can participate in the Board's proceedings. There may be other issues raised by the draft's provisions and we will be pleased to work with the Committee and its staff to offer detailed amendments and suggestions.

Mr. Chairman, as I suggested earlier, in addition to the issue of relocation we believe that expansion of sports franchises be addressed. Expansion clearly serves the interest of the public—particularly those communities whose desire and financial capacities can support new teams—as well as the interest of professional athletes by expanding the job market. Elimination of League restrictions that unreasonably limit expansion would further the national policy favoring market-place competition. We concur in the views expressed by the Department of Justice in January 1980 in its letter to House Judiciary Committee Chairman Rodino:

"When a geographic region is capable of supporting more than one franchise, it is not in the public interest to allow the existing team to block entry solely to protect monopoly profits."

We would add that an extraordinary majority should not be allowed to block expansion solely to protect monopoly profits.

Mr. Chairman, each sports league is a monopoly—it has sought and received over the years special favors from the Congress. These exemptions have secured a privileged position for this industry in American business and, except for occasional private antitrust lawsuits, has permitted these enterprises to operate without answering to any federal authority. Each league has acquired superior bargaining positions with respect to networks, cities, stadium authorities, professional athletes and their unions. League operations under commissioner rule, in many cases, resemble a virtual private government.

We suggest that the Committee undertake an in-depth study as to how exemptions for broadcasting and merger have operated. Has the public interest been served? Are communities threatened with franchise removal unless greater concessions are forthcoming? Have consumers paid more for this product as a result or artificially created scarcities? Are restrictions on player entry and movement in the

public interest? Is private antitrust litigation the optimal enforcement mechanism? Does the fact that legal costs can be divided twenty-eight ways as in the NFL, and the fact that potential plaintiffs have a short professional career, deter effective enforcement?

What is the ability of communities to retain or acquire a professional sports franchise? Have the sports owner-promoters operated in a responsible manner which entitles them to continue antitrust exemptions? Should the broadcasting exemption be unchanged, repealed or conditioned on certain changes in policies and practices?

We believe that Congress should undertake a comprehensive study of professional sports, not simply because of a baseball or football strike or because a football team has moved its franchise. It is needed because the existing monopoly powers of the sports leagues are so substantial that private litigation and collective bargaining cannot be relied upon to eliminate anticompetitive practices. The sports owners can and do pool their reserves. They easily can drain a union of its financial capacity to conduct litigation or negotiations. Just consider the disparity in wealth between the NFLPA and twenty-eight NFL owners or between the Major League Baseball Players and twenty-six baseball owners.

The Players Association believes S. 2505 is a reasonable beginning to this process. We pledge to work with the committee and staff to formulate effective and workable legislation.

I will try to answer any questions that you may have.

Thank you.

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS THERETO

Question 1. What are the ramifications of the Ninth Circuit decision in the Raiders case? How far does it reach, in affecting the collective decision-making or professional league members?

Answer. The Ninth Circuit decision in the *Los Angeles Coliseum v. Oakland Raiders* case held the NFL rule governing team transfers to be an unreasonable restraint of trade. The issue in the case was whether the L.A. Memorial Coliseum should be entitled to compete with stadiums in other cities for a professional football team and whether the Raiders should be entitled to move to another city and compete for the support of fans. The issue was not whether the NFL and its member teams, collectively, have no voice about where another NFL team is located. The authority of the League and its teams respecting team transfers was not challenged nor was it denied by the federal court ruling.

The question addressed by the court was what role with respect to team transfers can the NFL, or its teams, legitimately pursue. The court held that any legitimate interest must be based on objective criteria. For example, will the new location impose certain burdens on other teams in the league in terms of travel or scheduling. Will the new location not produce adequate revenues. "Fan loyalty and location continuity" also could be considered. The court suggested that there must be reasonable procedures to enable the team seeking to transfer to present its arguments and have its arguments considered. Its ruling follows other antitrust decisions which have required procedural safeguards in situations where personal animosity or caprice may motivate a decision. It was suggested to the court that to insure such fairness, the final decision on team transfers should be submitted to an impartial board. The Ninth Circuit, however, did not go that far. It simply upheld the ruling of the trial court that a three-fourths vote requirement without objective criteria is invalid under the law.

This decision, along with a long line of prior court decisions, upholds the principle that the NFL must conform its practice to the Rule of Reason under the antitrust law. NFL arguments that it is a "single entity" or akin to a partnership were rejected. The Ninth Circuit said:

"... profits and losses are not shared, a feature common to partnerships or other 'single entities'. In fact, profits vary widely despite the sharing of revenue. The disparity in profits can be attributed to independent management policies regarding coaches, players, management personnel, ticket prices, concessions, luxury box seats, as well as franchise location, all of which contribute to fan support and other income sources."

The NFL may not violate antitrust law any more than any other unregulated business. Its complaints that they are "damned if they do and damned if they don't" means simply that they may be sued just as any business may for violating the antitrust law. That complaint can be made in almost any industry. It cannot be avoided unless we deny those who believe they are wronged the right to sue. It is for the

courts to decide whether the complaint is valid or not. And we believe the courts should retain that function.

If the three-fourths vote requirement of the NFL applied without any objective criteria is invalid with respect to team transfer decisions, it may also be at risk insofar as league expansion is concerned. However, that issue was not before the Ninth Circuit. Of course, the NFLPA would prefer to see expansion proceed without the limitations now imposed by the League. A three-fourths vote requirement is currently mandated. The line of cases which have measured the NFL's actions against the antitrust laws all have rejected the NFL's "single entity" argument. They hold that the NFL has no greater burden in determining whether its rules or practices are invalid than other trade associations which must determine what cooperative activity is legal and which is not.

The NFL claims that unless it gets further antitrust exemption every league action and decision can be attacked and second-guessed. It asserts that this is because the sports business is novel or unique. The same claim may be made about any business. If there were any merit to Pete Rozelle's complaint then the antitrust law would have to be abolished entirely. We believe that would be unsound public policy. We oppose granting the NFL any further immunity or exemption from antitrust.

Question. 2. What is your response to the argument that free entry into sports leagues dilute the quality of the sports? How would you maintain some level of quality control over the product without an antitrust exception for collective action by league members?

Answer. The term "quality control" has been used by the NFL as an excuse to justify unreasonable restrictions on competition. Insofar as entry of new players is concerned, the courts have reviewed the player draft as it existed in 1968 and declared it to be illegal. *Smith v. Pro Football, Inc.*, 593 F.2d 1173 (1978). There, the NFL tried to justify its player draft restrictions on the ground that the draft assured "competitive balance" or the "quality" of the League's product.

The court rejected the League's argument. It held that the record evidence clearly established that the purpose and effect of the draft was to eliminate economic competition among teams for players' services. Although it found the draft anticompetitive the court did not conclude that any draft was impermissible. It observed there were a variety of alternative systems which would be less anticompetitive and could pass muster under the antitrust law.

With respect to the entry of new teams, we know of no one who advocates that the NFL has no role in decisions affecting expansion, or the addition of new franchises. Rather, it is urged that League decisions be made within a framework which is not subject to caprice or whim; where one owner "rubs the fur of another" to protect one's home turf and exclude competition. More than twenty-five years ago the NFL sought to convince the courts that it was exempt from antitrust because "the business of professional football is dependant upon having teams of reasonable comparable strength". That effort at exemption using "quality control" as an argument failed. *Radovich v. National Football League*, 352 U.S. 445 (1957). All the NFL is arguing today is that it would be better off economically if it were not required to conform to the Sherman Act. We disagree. Further exemption will benefit only the team owners. It will injure the fans, the cities, the stadium authorities and the players.

We believe the antitrust laws are flexible enough to account for the needs of professional sports as well as the motion picture industry, professional engineers, and other businesses. The antitrust law does not ban all collective action, but only such action that unreasonably restrains competition. That is the standard applicable to all other American business—it should remain applicable to the NFL.

Mr. ALLEN. Mr. Chairman and members of the committee, I would like to support everything that Gene has said. I think as a group those sports unions that are part of the Federation of Professional Athletes support in principle S. 2505 as something that is far superior—and I cannot emphasize that enough—to the previous attempts to interject a further antitrust exemption in bills that were sponsored by Congressman Stark in the House and Senator DeConcini in the Senate.

I would like to differ strongly with Senator Kasten and with Representative Stark and with Mayor Wilson as to the usefulness and benefit of further antitrust exemption. I do not think that people

have differentiated enough between this bill and that effort in this discussion. We, as Gene said, are totally supportive of the idea that franchises should be stable and, should for the fans and the players, remain where they are supported. But doing it through an antitrust exemption we believe is unwise, bad policy.

I think this bill—and Senator Mathias has already introduced a similar effort which deals with this issue from the point of view of the city and develops objectives—is admirable, and we would like to work with this committee and any committee in either House of Congress that is working in that direction.

But we do not believe that the way to do it is to put the decision in the hands of the league, because that presumes that the league as an entity is going to make business decisions that are contradictory to what an individual owner would do. And I do not think that in this discussion today enough attention has been focused on the question of pay television or cable television. It has been hit on, but I think one important point has been missed.

In the bills that were introduced previously that dealt with anti-trust exemption, there was also a section providing for an exemption for the sharing of pay TV or cable revenue. And Commissioner Rozelle was talking about how harmful it would be if an individual owner were able to separate himself off from the network package and go with a pay cable package of his own, how that would destroy the integrity of the league.

What is to stop the league from doing that itself? With that kind of new exemption, any sports league or the NFL or any other sports league could make a package deal with pay TV or cable TV or a mix of pay TV and cable TV and free TV. And I think it would be something that the fans would long remember as a black day in professional sports if that were to happen.

The legislation that has been introduced up to this point—not S. 2505 but other bills dealing with the antitrust exemption—has interjected that element that would give the leagues the opportunity to take pro football, the NFL particularly but other sports as well, off of network free TV and put them on pay TV.

And, Senator Long, to go to your question about the scarcity of tickets, I think there is a contradiction here if you support the idea that tickets should be available to the average person, but you also support an exemption for the sharing of pay TV revenues because it is going to be inexorable that leagues move in the direction of pay TV. And we will find ourselves in a situation where the average man will not be in a position to afford to watch football, much less to get a ticket to go to the stadium. So we are very concerned about that.

Senator LONG. Might I just respond to that for your benefit? It is within our power as a lawmaking body to say what they will do and what they will not do, and that is what we are here for right now. That is what we are talking about, saying what they will do and what they will not do.

Mr. ALLEN. I understand that.

I think it was unfortunate that Mayor Wilson—and I think Gene would not find it difficult to defend himself in this case—impugned the integrity or objectivity of Gene Upshaw in his opposition to the antitrust exemption. I think it is unfortunate that reasonable

people at the league office in the NFL and with the Raiders could not work out a settlement that would have kept the Raiders in Oakland. But I do not think it is a fair characterization of the facts that the law prevents the NFL or any league from making reasonable rules with respect to franchise relocation.

I do not think that is what the ninth circuit court decision said. I think that it is possible. I just think that up to this point the NFL has chosen not to do so.

Briefly, in closing because the question was asked several times by Congressman Stark and Mayor Wilson, I would like to articulate what our concerns are about this antitrust exemption and further power to any sports league.

We are concerned that an exemption would be used by sports leagues to broaden monopoly powers with respect to something like a merger between the USFL and the NFL, which has been talked about by a lot of USFL owners and which we think would be harmful. We think competition in the marketplace is very helpful.

Again, the movement off of free TV to pay TV or cable TV, we believe could lead to franchise hopscotching, particularly if the league is immunized for all franchise relocation or expansion decisions. There is nothing to prevent the league from deciding to hopscotch franchises around, chasing the best pay TV markets.

Other areas which we dealt with in the 1970's, in several successful lawsuits, are the powers of the Commissioner, the player draft, the standard player contract, and player movement which Senator Long referred to. So we have many concerns in this area, and we would ask that this committee or any committee considering this question of antitrust exemption move slowly so that all of the player and fan concerns could be dealt with because they are considerable.

Thank you very much for your attention.

Senator GORTON. Mr. Fehr?

Mr. FEHR. Thank you, Senator, I will try and be concise, but I must confess that in listening to the testimony here today—and I was here for all of it—I was struck by what is the apparent unwillingness to realize the essential problem which has caused us all to be here today. Now, before I go on, there were references made by prior witnesses to the effect that the Major League Baseball Players Association did not support this type of legislation. I testified on behalf of the Baseball Players Association before the Judiciary Committee in September of 1982 and emphatically said what I reaffirm here today, that is, that we think there is a public interest with respect to the location of franchises, and that the public policy with respect to that location of franchises is not something which ought to be decided in owners' meetings. It ought to be decided by appropriate bodies in connection with determinations of law.

In that regard, while there may be some provisions of S. 2505 that we think need further examination, the concept of having a body duly constituted by act of Congress to review the appropriateness of franchise moves against generally accepted standards is something that we wholeheartedly support.

Now, having said that, I would like to take this opportunity to draw the attention of the committee to what we think the real problem is, and to emphasize what happens if this legislation is

passed in its present form without more. At the moment, you have something very simple. You have an artificial scarcity of franchises. It is most apparent in baseball because of baseball's blanket antitrust immunity, coupled with all of the interlocking agreements between every major league and every minor league team, and all of the Latin teams and the Japanese teams, means you cannot have new leagues for all practical purposes.

Now, what does not mean? That means somebody has to do without a team, and I fully understand and sympathize with Mayor Wilson's concern, and his upset and outrage over the Raiders' move to Oakland, because I felt the same thing when the Kansas City Athletics picked up and moved to Oakland from Kansas City while I was living there.

The point is: Why are there not teams in substantially every metropolitan area capable of supporting them? Why was it, as I understand it from the newspapers—I was in college at the time—that in order to get an expansion team in Kansas City after the A's left, in essence, Senator Symington held a legislative gun to the head of organized baseball? And why was it that in order to get a team in Seattle again, Senator Gorton had to hold a judicial gun to the head of organized baseball? Why was it when the Braves moved that it took the failure of another franchise to get a team back in Milwaukee?

Now, with a very quick analysis, I think this can be made clear. What Senator Boschwitz and Mayor Fraser complain about happens. The Minnesota Twins do, I think, what it was suggested they do. They have taken a franchise and they have run it into the ground, and when they get into trouble and when they do not think they are making enough money, there are two immediate reactions: one of which is to demand whatever concessions seem appropriate at the time from the municipal area, and the second of which is to threaten to leave if the concessions are not forthcoming.

Now, you can only leave if there are other metropolitan areas capable of supporting teams that don't have them. Otherwise it is not economically viable to do that, and I suggest that it is the very absence of expansion into those cities which sets up the leverage that Calvin Griffith is now exploiting against the city and the people of Minneapolis.

Now, what do you do about it? We think it is so simple and basic that it gets lost in all of the various conversations and emotional outrage. I would ask you to consider that for all practical purposes, since 1900, organized baseball has been the only industry in the country which is unregulated and which is exempt from the anti-trust laws. And what baseball does is to hold cities hostage for expansion. You are not going to end the selling of franchises and the bidding by keeping teams where they are. What you are going to do is to make the mayor of Indianapolis go to the National Football League, hat in hand, and satisfy 32 people. And I suggest that that is not any better. That is what happens in organized baseball, and that is what has always happened in organized baseball.

Now, let me just make another observation in that regard. New Orleans did not have a pro football team for a long, long time, nor did Seattle. And I ask you to consider what would have happened if

this Congress had not permitted the NFL and the AFL, two viable, productive leagues, to merge so that they would then divide markets among themselves. I suggest to you that you could reverse the present problem, and I suggest that what would have happened is that if Seattle was capable of supporting an NFL team, or New Orleans, and they certainly are, that at least two leagues would then have said "I want to make New Orleans (or Seattle or Memphis or Phoenix or Tampa or Miami) a better deal."

That is not what happens now. What happens is those cities and their representatives have to climb all over one another offering concessions. I must tell you that I am somewhat offended, not only by the way that Mayor Schaefer described that he was treated, but also by the very prospect of an American municipality being forced with its local and state governments to engage in that kind of practice. And the only reason they can is because there are other places artificially denied teams.

Now, where does that take you? We think it is very simple. The classic examples of the abuse of the exemption from the antitrust laws that are operated in by leagues are two. One is players. That is not the subject of this hearing, and I do not want to get into it except to say that baseball's wonderful record of having great competition and not the same team winning all the time occurred after free agency, which they bitterly fought, and not before.

But with respect to that matter, if rules passed by leagues are reasonable and not anticompetitive, they are going to pass muster. If they are unreasonable, they are not.

What we would like to see is a situation created in which those cities which are economically viable to have teams would have an opportunity to have them, and I suggest to you that if there was not one major league baseball entity, that long ago a number of those cities would have had those teams because what happens now is that cities come in and make offers and make suggestions and seek and hope for expansion, and the answer, 99.99 percent of the time, it is not good enough; go back and do better.

And if anybody in this room thinks that there was not going to be a football team in Los Angeles when the Rams moved to Anaheim, I think you ought to reconsider that. I suggest that the question never was was the city of Los Angeles going to be denied a team. The question was who was going to have the right to sell it. And the National Football League wanted the right, I submit, to say not now, Los Angeles, make me a better offer. And to continue to do that until it got to the point where it was satisfied with the offer.

And Senators, I think that is just plain wrong. I think it violates the spirit of general public policy in this country.

My final comment is this. Mr. Rozelle testified that he wants to be treated just like Ford, Chrysler, and General Motors. No, he doesn't. He wants to be treated as a single entity, and he and baseball then want to be the only entity. And I ask you to consider what the Justice Department's reaction would be if there was only one General Motors and you did not have Ford and Chrysler. That was precisely the effect of the AFL-NFL merger. All the competition for franchise locations ended. That is what happened. That is precisely the effect of a major league baseball is antitrust immuni-

ty. There is no competition. Anybody that wants a team has to come in and beg for it.

Now, having said that, I just want to reaffirm that, we think the public policy of this country ought to be decided by duly constituted legal authorities, not in owners' meetings. We think the approach suggested, in the bill introduced by Senator Specter in the previous session, and in the current piece of legislation, has some merit. We are not enthralled with all pieces of it, but the one area that causes us the most overriding concern is the idea that we will give to a very small bunch of privileged, wealthy people who happen to be lucky enough to be in what may be the most exclusive club in the world, owning professional sports franchises, special additional breaks under the law. The public ought to be having that decisionmaking authority, and not the owners of sports clubs.

And I thank you for your attention.

[The statement follows:]

STATEMENT OF DONALD M. FEHR, ACTING EXECUTIVE DIRECTOR AND GENERAL COUNSEL, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Mr. Chairman and Members of the Committee: My name is Donald M. Fehr, and I am the acting executive director, and general counsel of the Major League Baseball Players Association. The MLBPA is the exclusive collective bargaining representative for all major league baseball players. Since I became general counsel of the MLBPA in 1977, I have been actively involved on a day-to-day basis in the negotiation of, and administration of, the various collective bargaining agreements between the Players Association and the 26 major league clubs. I welcome the opportunity to present the following comments and observations to this committee with respect to the proposed "Professional Sport Team Community Protection Act", S. 2505. (All references herein are to S. 2505, Staff Work Draft, dated 13 April 1984.) As will be explained, while we are sympathetic to the factors which have caused this piece of legislation to be introduced, we do not believe that it meets the problem.

Major league baseball is certainly no stranger to the movement of franchises from city to city: the Brooklyn Dodgers moved to Los Angeles; the New York Giants moved to San Francisco; the Washington Senators moved to Minnesota; the Washington Senators (expansion franchise) moved to Dallas; the Boston Braves moved to Milwaukee; the Milwaukee Braves moved to Atlanta; the Philadelphia Athletics moved to Kansas City; the Kansas City Athletics moved to Oakland; the St. Louis Browns moved to Baltimore; and the Seattle Pilots moved to Milwaukee. In each instance, of course, the move was sanctioned by the league. When teams moved, municipalities and the public had no real recourse, except to plead to be granted an expansion franchise (i.e., the Kansas City Royals in 1969, or the Seattle Mariners in 1976). The simple fact is that as long as there are not enough franchises to go around, someone will have to do without. If the passage of this bill, for example, would prevent the movement of the Minnesota franchise (to Denver? Memphis? Indianapolis?) then by passing this particular piece of legislation the Congress will, in effect, prevent any city not currently holding a major league franchise from ever acquiring one, unless and until those who own major league franchises deem it in their best interest to expand to those cities. Thus, we submit that the most appropriate question is not how to prevent teams from moving from city to city, but rather why cities which are economically able to support major league franchises continue to be denied them.

The answer to the foregoing question is really a very simple one. Baseball enjoys a *carte blanche* antitrust immunity. By virtue of that immunity, the clubs are free to grant or withhold franchises to municipalities at their whim—and that is exactly what they do. Accordingly, cities are continually competing for an artificially scarce resource—to the detriment of the cities involved.

Consider the following. If the 26 major league baseball teams were broken up into two, three, or more competing leagues, who were not permitted (as they are under the present state of the law) to agree with each other to artificially control all franchise locations, is there any doubt that those leagues would be actively competing with one another to place franchises in those metropolitan areas economically capable of supporting them? The situation which is now extant would be reversed. Cities

would no longer be climbing over one another, competing with one another, to secure an artificially restricted commodity—a major league baseball team. Rather, if a metropolitan area was economically capable of supporting a team, teams would be competing with one another to give the city the best deal. That result would clearly be in the public interest.

Representatives of the Players Association have previously testified on several occasions with respect to the anti-competitive effects of special antitrust treatment of professional sports leagues in general—and of major league baseball in particular. I would respectfully refer this committee to my testimony before the Judiciary Committee in connection with S. 2784, and S. 2821 (97th Congress) in September, 1982.¹

In that prior testimony, we did express the opinion that S. 2821 (97th Congress), the "Professional Football Stabilization Act of 1982" should be given serious consideration if the Senate concurred in the opinion that public policy should discourage relocation of sports franchises. Our reason for so stating was, and remains, simple—the restrictions now present on the relocation of franchises are imposed unilaterally by those who own professional sports franchises—and, in baseball, such decisions are free from antitrust scrutiny. We still hold to that position. Having said that, however, there are certain provisions of the pending legislation which raise serious questions:

1. This legislation does nothing to increase the number of available franchises. In practical terms, this means that while legislation of this type could keep a major league franchise in a given city, the city that would otherwise have had an opportunity to secure that franchise will be put in an even worse position than it is now with respect to what it would cost the citizens and taxpayers of that city to secure a franchise. At that point, the only thing such a metropolitan area could do is to repeatedly approach major league baseball, hat in hand, and hope at some point for favorable treatment. We would rather see a situation in which two or more leagues approach a metropolitan area seeking to have the right to locate a franchise here.

2. Section 5(a)(2) provides that no team may be moved unless it first secures the approval of its league. This provision can be read to eliminate current application of antitrust law with respect to the requirement such league rules be reasonable (and subject to scrutiny under the Sherman Act. Public policy of this country—for this purpose or any other—is not served by anti-competitive league rules restricting movement.

3. Section 7(d)(2) provides that financial hardship is to be judged with respect to "incurred net operating losses". It is difficult to determine precisely what that terms means in the current context. I can tell the Committee that notwithstanding our being advised by the owners that baseball clubs have losses, the purchase price being paid for such franchises continue to escalate at a very high rate.

4. Finally, the provisions of this bill could be read to empower the Board to direct the sale of a franchise to a person making an offer of retention, even should the other members of the league for legitimate reasons, not be willing to approve the sale. That matter should be addressed more fully in the context of any contemplated legislation.

In summary, we agree that if the public interest would be served by restricting the territorial movement of franchises, that restriction should be imposed as a matter of law, and not by league action. The public policy of the United States should not be determined in owners' internal meetings. Having said that, however, I am of the view that this legislation is not designed to meet the central problem, which is an insufficient number of franchises. We suggest that that is the problem that should be addressed. In baseball, we submit that prompt congressional action to eliminate baseball's antitrust exemption would be the surest way to accomplish that goal in the fastest possible time.

Senator GORTON. Thank you, Mr. Fehr.

Mr. Upshaw, can you describe what impact the moves of the sort that Oakland made to Los Angeles and which Baltimore has recently made have on the players themselves?

For example, I guess you went through one. Have you spoken now to players from former Baltimore, now Indianapolis, and is there any pattern of reaction to that kind of move?

Mr. UPSHAW. Well, I am sure the players in Baltimore are going through exactly what we went through in Oakland. We did not

¹ See Senate Judiciary Committee hearing Serial No. J-97-134.

know if we were going to Los Angeles or staying in Oakland. Right now they say that the Colts are in Indianapolis and the players are in between. They do not know what to do. There is a tremendous personnel impact because you have no decision in the move. It is the decision of an owner pitting one city against the other. When the best deal is made, they make the decision.

I agree with the baseball players and Don that basically expansion is really the problem. I mean, if teams were allowed into cities that could financially support them, the public interest would really be served. And that is really what we should be looking at. We should look at the way that the franchises are distributed and the voting procedure to allocate them.

Senator GORTON. Is there any difference between the kind of move which was represented by Oakland to Los Angeles, Baltimore and Indianapolis of the kind that Senator Lautenberg was talking about, which was within the range of, say, 50 miles, within the same major metropolitan area? From the point of view of the players, is the latter not of so much concern?

Mr. UPSHAW. It is of concern because when I heard that the NFL really held down moving in the last 20 years, it conflicted with the facts of several moves. I mean, we know of Detroit moving to Pontiac, Los Angeles moving to Anaheim, and the Giants moving from New York, and others as well. Each move is just as important to a city that is building a community—I mean, what Baltimore is doing now is important. They do not have a team. There other moves are just as dramatic as far as a city is concerned.

Senator GORTON. Does the players association have any general policy statements with respect to expansion?

Mr. UPSHAW. We are never asked.

Senator GORTON. Well, regardless of whether you are asked or not.

Mr. UPSHAW. Our general rule is we are very much in favor of expansion simply because if there are cities and communities that can support a franchise, they should be given the opportunity. It also increases our job market. I am interested in that. Every union is. And we are no different. And as long as we have all of the things that are needed to make it attractive, we are very much in favor of expansion.

Senator GORTON. Senator Long?

Senator LONG. Mr. Allen, have you represented players in negotiating contracts?

Mr. ALLEN. Have I represented them?

Senator LONG. Yes.

Mr. ALLEN. As a staff person for the NFL Players Association, I have worked with players and their contract advisors on individual player negotiations, yes.

Senator LONG. Because I was wondering, in negotiating for contracts, have you ever asked the owners to provide the players with some stock in the club?

Mr. ALLEN. I think we made that request at our last negotiations collectively. At least that is the way it was characterized by some.

Senator LONG. Because my impression has been that as often as not, if those who represent the workers—in this case, the players are the workers—would just put that on their shopping list, as

often as not, management will agree to it without insisting on anything extra. If they just put it down on their shopping list and asked for it.

Mr. ALLEN. I think that there may be some merit to that depending upon which sport you are talking about. I think it is important in this discussion to differentiate between a league that has through merger and other mechanisms operated essentially as a monopoly as is true of the NFL for most of its 65 years, and a league, for instance, such as the North American Soccer League, which has been having some problems of late, or the USFL, which is a league that is just getting started. In some of those other situations perhaps ownership in those leagues would be interested in some kind of a sharing of the risk of investment in the club.

In the NFL, they are doing rather well, and I do not see a move on the part of the owners, even Al Davis, to offer to the players any piece of the club.

Senator LONG. Have they asked? Have the workers asked? Have the players asked for it?

Mr. ALLEN. In individual negotiations, I am sure that has happened. I don't think that the chances of success being what they are, that it has occurred to too many players.

Senator LONG. Well, have they asked for it? Have they asked for stock in the club in their collective bargaining?

Mr. ALLEN. Well, we did not ask for stock ownership in the club. We asked for a formula for the sharing of gross revenues in our last negotiation.

Mr. UPSHAW. You said that you make the law here. Why do you not introduce some that we can have a part of the club? That might help us.

Senator LONG. Well, I have done it. I was going to ask you, Mr. Allen, and Mr. Upshaw, too, that a little provision of law that is known to most business people and to most manufacturers that says that an employer can have a tax credit for one-half of 1 percent of payroll if he sees fit to allocate the benefit of that to the workers. Now, that would apply I think to professional football.

Do you have anything like that? They call it PAYSOP. Do you have anything like that in football?

Mr. ALLEN. Not at the present time, but the thought has occurred to us, and maybe we just haven't had up to this point the courage to venture the question, given what we suspected the answer would be.

Senator LONG. Now, that wouldn't cost management a penny, you know, it wouldn't cost them 1 cent.

I have had a lot of executives of large companies come up here and say that is a great thing and being tremendously enthusiastic for it on behalf of their workers.

Did you want to comment on that, Mr. Fehr?

Mr. FEHR. Yes. I appreciate the opportunity. I cannot resist.

In baseball, in some negotiations, that has been talked about, and what happens is the owners pull out their rule book, major league rules, which are all of these unilaterally passed rules among themselves all of these years, and they point to a rule that says, you see, I can't, even if I want to, the major leagues have a rule against any player owning stock in a club. And the next thing they

will say is we could not have that, then I could not trade that. And the next thing they will say is, well, we could not have anybody owning stock in a team because stockholders tend to want to look at the books from time to time, and that is something which has been abhorrent to them. The one time that I know of that it was suggested in collective bargaining, it was not serious, but in an aside during the last negotiations, at one point I mentioned to someone else that maybe we ought to have an ESOP in baseball, an employee stock ownership plan, that that would make things easier and we would trust each other a little better and so on because you would have to. The reaction was not a spoken one. It was a look of unspeakable horror.

I think the odds of the owners of major league baseball seriously considering that suggestion are nil, absent some kind of a legal mandate that they do it.

Senator LONG. Well, I do not know how you are going to consider it if you do not even ask.

Which one of you three have ever asked? Now just raise your hand if one of you have asked on behalf of the employees for stock in the company, that is, for stock in the club.

Mr. FEHR. It has been done in individual negotiations, to my understanding.

Senator LONG. Have you ever asked it?

Mr. FEHR. I have never represented a player.

Senator LONG. Have you ever asked it?

Mr. UPSHAW. You are looking at three guys who just got on the job.

Senator LONG. All I am saying is I have gone through labor groups and I have gone through the Louisiana Federation of Labor, which is a branch of the State federation of labor, and made this point. I have managed to get stock for the workers without their doing a blessed thing about it at all. If I can do that much for them without their help, think how much more they could do with their help.

Here you are, you have got a chance to ask for it now. You are before a committee of the U.S. Senate, and we have a bill that is going to conference, and I am going to be one of the conferees. There are six provisions in that bill that make employee stock ownership a better deal for the workers, which would be a better deal for the players.

Do you favor them or not favor them?

Mr. FEHR. Senator, we have the opportunity at the end of this year to engage once again in collective bargaining, and I would be pleased to discuss with you and members of your staff, and with the players and the members, the executive board members. In any event, that is a possibility in collective bargaining. I cannot assure you we will ask for it. I do not have that decisionmaking power.

I suggest, however, that it might be very instructive, and we might get a much more precise answer if a representative of your staff or this committee staff were to inquire of major league baseball whether they would be receptive to such overtures.

Senator LONG. Well, look, please understand, I am for it. I want the players to have a good deal. I want you to do a good job representing the players.

Mr. FEHR. So do they.

Senator LONG. And as far as I am concerned, I want it to be a good deal for all concerned, including every man that you represent and every woman you represent. I want every one of them to have a good deal just like I would like for my job to be a good deal for me. But to make it that way, you have got to have some help from the others.

Now, so far we have made tremendous headway up here in the area of employee stock ownership, and I am not aware of anything except maybe Frasier, who just presently went out as head of the United Automobile Workers, have done to push the idea that the workers ought to own some stock in the company, especially if they do a good job.

It seems to me that you ought to be making that a part of what you were after. And incidentally, one of the issues we have to contend with up here, we have got an argument going on as to whether the stock the workers own should be voting stock or whether it should be non-voting stock.

I have opposed it being voting stock for one reason: I am afraid that in many cases where the owners would be glad to give you stock, but they are afraid they will lose control over the companies. So in situations like that, my reaction is, I would rather have the workers have the stock without voting than not to have it if it is just a matter of either having it or not having it. And I am not talking about taking anything extra. I am just saying in my judgment you could have gotten stock in the company or stock in these franchises for your members if you had just asked for it and made the effort.

Mr. ALLEN. Senator, we go to the bargaining table for the first time very shortly in the USFL, that is, the players' association with the owners, and I think there are two categories in sports where you might find more receptivity to this idea. One would in a franchise that is having some problems, and another would be in a new league that is just getting off the ground.

I would not be surprised if the idea of profit sharing or an ESOP situation would be met with less resistance in the USFL than among the NFL owners, and I would venture to guess that it will come up early and often in our collective bargaining.

Senator LONG. You fellows—so you see, you asked me, why do you not do something, and my reaction is I am doing something. I am asking you why do you not?

Mr. UPSHAW. Well, you said did we ever ask. Maybe we did not ask in the same terms that you use as stock, but we did ask for 55 percent of the gross in our last negotiations, and we could not keep them in the room. But we asked. The commissioner said we ended up with—and he is incorrect—\$1.6 billion in salary. That is not true. It was \$1.6 billion in total costs, just to correct this statement, and that includes everything that is related to player costs. We could not get 55 percent. We were not able to achieve it, and they used the same arguments you are using, for not giving voting stock. They claimed it would give us control, and we would want to see the books. They used all of the arguments that Don has brought up and that you are raising.

Senator LONG. Well, under the law, the only situation in which it would have to be voting stock, so far as I can determine at the moment, is just if it is the situation where you are getting a tax credit. Now, there is a provision there that I personally think we ought to amend because it has kept a lot of companies from setting up plants for fear that that might jeopardize the voting control in their own company. But other than that, my impression is that the stock need not be voting stock.

So I think you could bypass that issue when you are negotiating. And incidentally, if that is what is keeping you from getting stock in the company, I think you ought to come up here and ask us in the Congress to say that it need not be voting stock, just let them have the stock. My studies indicate that most people do not really care whether they have voting rights or not. What they want is the money.

Mr. UPSHAW. You know, you mentioned tax credits, and I know we are getting off onto other subjects here.

Senator LONG. Well, I would remind you, Mr. Upshaw, this is a very important matter, as far as I am concerned. That matter is in conference right now between the Senate and the House. Go ahead.

Mr. UPSHAW. You mentioned tax credits a second ago. As players, we do not get tax credits, but the owners do for the depreciation that they take on each one of us each year. We are not allowed that. That is another issue, but we are concerned about any credits we can get.

Senator LONG. Well, now, my Bible says ask and ye shall receive, and you should not be up here, Mr. Upshaw, complaining about something you never asked for if you did not get it. You ought to ask for it if you expect to get it.

Mr. ALLEN. I have not had the opportunity yet. We have not had our first bargaining session. But in the NFL we asked for it. They just did not like the format of the question. And while we are on that subject, ask and ye shall receive, I would like to make one point to both you and to the chairman about the particular bill that we are addressing, differentiating our position in the NFL Players Association perhaps from the other unions. I want to support what Steve Ehrhart from the league said about the grace period. I think it is extremely important that you differentiate between a league that is struggling, like the North American Soccer League and a new league like the USFL in this bill, and that there be a provision which allows a new league or a suffering league to get back on its feet or up on its feet.

Senator GORTON. We would appreciate very greatly any specific suggestions as to how to carry that out.

This was a matter of concern to this Senator in drafting it. The USFL would not come under the bill right now, but the North American Soccer League would. It is obviously in very, very bad shape at the present time and almost certainly should not be covered.

Mr. ALLEN. I think there are two basic suggestions which we would be glad to expound on and give you in writing.

One would be that perhaps the time limit or the grace period should be longer, and the other would be that for a league or a team that is in a situation like the North American Soccer League.

The procedure for calculating or making the decision could be expedited.

Senator GORTON. Any written suggestion you have on that subject would be appreciated.

Mr. ALLEN. Thank you, Mr. Chairman.

Senator GORTON. Thank you all very much for your help.

The hearing is adjourned.

[Whereupon, at 2:10 p.m., the committee recessed subject to the call of the chair.]

PROFESSIONAL SPORTS TEAM COMMUNITY PROTECTION ACT

SATURDAY, MAY 12, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Minneapolis, MN.

The committee met, pursuant to notice, at 9:15 a.m., in room 307, City Hall, Minneapolis City Council, Hon. Slade Gorton presiding.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. This is the second hearing on S. 2505, the Professional Sports Team Community Protection Act. I am Senator Slade Gorton of the State of Washington and a member of the Senate Committee on Commerce, Science, and Transportation, to which that bill has been assigned for hearing and for action.

It appears from the witness list that the focus of the hearing today will be professional baseball. The first of the hearings on this subject, in Washington, DC, 2 weeks ago, was focused to a very considerable degree on those cities which had relatively recently lost major league sports franchises: Baltimore, from which the Colts have been moved to Indianapolis in the last few weeks, and Oakland, which has been engaged in protracted litigation with respect to the removal of the Oakland Raiders from that city to Los Angeles. This hearing is in some respects even more important because it is taking place in a city which may be more immediately threatened by the loss of a major league team than any other in the United States. Legislative proposals of this sort, while they are always controversial, are less so when they are prospective in nature than when they are retroactive. And it is the hope of this Senator and of any others that we can, at the very least, prevent, in the future, the kind of moves which were characterized by both Oakland and Baltimore.

Senator Boschwitz and I have discussed this subject at length over a period of many months. I have had a longstanding interest as he has in this subject. In my case it stems from the relocation in the American League of the Seattle Pilots after a single season in 1969 from that city to Milwaukee. At that time I was attorney general of the State of Washington and brought suit against the American League on both State antitrust and various other legal theories.

After some 5 years of litigation, and only after it appeared apparent that the jury would rule in favor of Seattle, the American League settled by expanding both to Seattle and to Toronto.

The experience which Seattle and the State of Washington has with the Pilots was both upsetting and unsettling; it is one that I don't wish my own city to go through again, nor do I wish to see this great community suffer the same kind of trauma.

I'm particularly impressed in following the press in Washington, DC, with respect to the situation here, on the heroic efforts being made by the city, by the citizens of this region, to save your team. In my view you deserve to keep the Twins. I hope that there will be no need for this legislation to apply to Minneapolis in the immediate future simply because you will be successful in your efforts. But other cities have found, to their regret, that sometimes those efforts locally, no matter how successful or no matter how well intentioned and how successful from a financial standpoint, are not successful with the owners of the team.

In my opinion, there is a very tangible possibility, perhaps even a probability, that we will be successful in moving this legislation at least through the Senate during the course of this year. There are many Members of Congress from all parts of the country in both Houses and in both parties who are deeply disturbed by the callous treatment that more and more sports teams' owners seem to impose upon their hometowns. As remote as this issue is from any of the serious challenges facing the Congress, from foreign affairs to civil rights and to the budget and the like, it is nonetheless an extremely serious concern, not only to the economic well-being, but to the emotional and psychic well-being of many of our cities.

I would like to thank my distinguished colleague and very close personal friend, Senator Boschwitz, for his hospitality today, and particularly for his interest in the subject. The Twin Cities and fans of the Twins could have no finer or more eloquent advocate in the Congress of the United States.

Without his commitment to you, this effort would not be proceeding at such a rapid pace, nor would it have the real prospects of success which, actually, we intend upon it.

And with that, I turn the microphone over to Senator Boschwitz and ask him for his statement in this.

**STATEMENT OF HON. RUDY BOSCHWITZ, U.S. SENATOR FROM
MINNESOTA, ACCOMPANIED BY JANN OLSTEN**

Senator BOSCHWITZ. Mr. Chairman, I think I will go over here to the witness area and speak from there.

Mr. Chairman, I want to welcome you to Minnesota. We are very grateful for your willingness to travel out here and witness for yourself what this community has done, what it is doing, both past and present, to keep its major league baseball franchise. I also want to thank the other witnesses for taking time to come on a Saturday morning, particularly opening day of fishing season, to tell their story. Not only the story of the Minnesota Twins, but to lay the basis and the foundation for the legislation that we are considering in the Senate. S. 2505 is something of an expansion of a bill that I introduced which would have applied solely to baseball, but this bill is broader, and as a result, we have interest in it from the NBA, which is here this morning, and other sports activities as well.

The hearing really is quite timely. Although scheduled 2 weeks ago, the events of the last few days will serve as excellent testimony in favor of this legislation.

A couple of weeks ago we had a hearing in Washington, Mr. Chairman, with you and I and with some of the others who are testifying here this morning. We heard Senator Mathias of Maryland describe how the owner of the Baltimore Colts forced that community to jump through hoops and dance to his tune, and the only result was humiliation and anger. And as Senator Mathias said, "They slunk away in the middle of the night." And that is something that we are trying to prevent, not only here in Minneapolis, but also prevent in other cities of our country.

Unfortunately there is probably not much we can do retroactively for the city of Baltimore or the city of Oakland or others that have lost the franchises, but the question is: What will happen in the future?

The saga of the Twins in Minnesota should be just as instructive. This present-day story will underscore the importance of ensuring that a community's interests are considered before a major league sports' owner decides to pick up stakes in the middle of the night, as has happened in Baltimore.

Perhaps it would be most appropriate, Mr. Chairman, if I ask my counsel and my former administrative assistant from Washington, Jann Olsten, who is now in the practice of law here in Minneapolis, to lay the legal groundwork for this legislation. If I may, I would like to yield to Jann Olsten.

Senator GORTON. Jann, it is nice to see you again.

Mr. OLSTEN. It is nice to see you, Mr. Chairman. Thank you, Senator.

Yes, the legal framework in which this legislation is put together would best be described by some background on the antitrust status of baseball as it exists today and how it came to be. Basically baseball is the only professional sport that hasn't even a color of antitrust exemption from—by way of some Supreme Court decisions that date back to the 1920's and have been reaffirmed as recently as the well-known *Flood* case in 1971. Back in 1922 the Supreme Court of the United States was first asked to rule on the antitrust laws as they like apply to baseball. And at that point the Supreme Court acknowledged that—or found, rather, that baseball didn't constitute interstate commerce, and as a result of that, said the antitrust laws do not apply. Well, of course, the nature of baseball has changed significantly since the 1920's, and in the intervening years a number of things have happened to call into question that status of baseball. In the intervening years, between the 1922 decision and 1953, which was the next major decision affecting baseball, there was quite a bit of activity in Congress; a number of bills were introduced, both in the House and the Senate. I believe that the House may even have passed a particular piece of legislation, and the Senate as well, but neither House passed the same bill, and as a practical matter, although there were efforts, the status of the decision, the 1922 decision, was left untouched.

In 1953 there was a case by the name of *Toolson v. the New York Yankees* where the Court, the Supreme Court, again looked at the antitrust status of baseball, acknowledged that the basis for the

1922 decision, that is, that baseball didn't constitute interstate commerce, was no longer valid. Nevertheless, they said: Congress has deemed it in the intervening years to be within its purview to decide whether that status should change. So, in essence, the Court in *Toolson* said that Congress has attempted to do something about this; we are going to leave this within the purview of Congress, and if the status is to change, it is going to be done by way of legislation, as opposed to the Courts.

The *Flood* case in 1971, acknowledged that the exemption of baseball from antitrust laws is an established aberration of those laws, but again, nevertheless, said this is something within the purview of Congress, not the courts, and that, in essence, leaves the 1922 status unchanged: major league baseball, according to the last Supreme Court decision, still has the authority to control the movement and the location of its teams.

Certainly the tone of things has changed, even as recently as the Al Davis/Oakland Raiders case, affecting football, but courts, at least thus far, have said, have looked at Congress and legislation such as this to dictate what changes, if any, should be made in that status.

Senator BOSCHWITZ. Mr. Chairman, as you know, this bill requires that an owner tell the local government that he intends to relocate his team, and then an impartial arbitration board is set up that would receive local offers. If the board found that any local offer is equal to or better than the offer to move, the team could not be relocated. So a community that has invested a good deal into a team kind of has the last look. It still can be sold to local or out-of-town buyers, but only on the condition that the team not be moved if a local offer could equal or exceed the offer made by others.

Mr. Chairman, some people have complained that there is anti-free-enterprise type of bias in this bill. Anyone who knows me and my background can tell you that I am a strong advocate of the free-enterprise system. However, being a businessman helps me recognize what free enterprise is and what free enterprise isn't. And a major league sports team operating out of a publicly financed stadium with Federal antitrust exemptions in the nature that this is in baseball is not like running a local barbershop or running a local plywood store as I was accustomed to doing.

Let me make an analogy to that, if I may: We started in this city about the same time as the owner of the local baseball franchise, as a matter of fact, 2 or 3 years later, as I recall. But we started at that time, and we were not invited here; we came, and we sought out the community, and found that it was a good place to do business. And nobody said to us: Rudy, you are going to have the exclusive franchise to sell kitchen cabinets, as an example, here in the Twin Cities, and that you alone will be able to sell them, and that, you know, do it in a nice way and in a way that is in accord with the principles of free enterprise and business. As a matter of fact, we did just that, and certainly the owner of this franchise did just that early on, won the American League Championship, was involved in the World Series. Perhaps, we, early on, with our kitchen cabinets, did the same thing, and then suddenly we decided: Well, we have the only franchise in town to sell this product; we are

going to buy a little cheaper model; we are going to keep the same price, but we are going to buy a little bit of a cheaper model. And where else can the folks buy it? And, of course, that is not exactly the essence of free enterprise.

So, the community decided that in order to entice us to bigger and better things, they would build us a bigger warehouse, a stadium, yes. Occasionally the roof had some problems, but essentially it was a marvelous new stadium that cost the community many millions of dollars. New roads were built. New businesses were installed. And all the time my enterprise did worse and worse, from the standpoint of the kitchen cabinets, but that made no difference, Mr. Chairman, because I had the franchise, and that is the value of the business.

The value of the business was not created through the normal areas of free enterprise where you buy and sell and make a profit. The profits and the opportunities really existed in the exclusivity that accompany the franchise, so that indeed that exclusivity having been granted by the community and expanded by the community through investments and other things, that type, in my judgment, creates a public interest, and that is what we are trying to protect through this legislation.

The value of the business is not created through free enterprise; the value of the business, rather, is created through the exclusivity or through the grants of the leagues. And the community never built my warehouse, Mr. Chairman. The community never built special roads that lead to my warehouse. We operated very much in the area of free enterprise, and I don't think that one can make that kind of analogy to this team, to sports teams in general, under many, many circumstances.

If my warehouses were built from public funds provided by the State legislature, and the Federal Government allowed me to prevent any competitors from moving in, which is a dream I have often had in my business, but in that case I wouldn't be claiming to run a free enterprise. I could charge high prices for low quality, something that, of course, I would never do, and if, over time, people stopped shopping in my stores, I could pull up stakes and go elsewhere, and the value of my business would still be there. This is not a free-enterprise situation; this is a situation where the public rightfully has a meaningful interest, and that is the basis of our legislation.

I should point out that things change from time to time. I note, Mr. Chairman, that as we talk about our local team, it is in first place, I believe a half a game ahead of another team from Seattle, but that happens.

Currently there are no requirements for the owner to take into account the fact that the community has built a new stadium and has backed the team for many years. And as we saw in Baltimore and other towns, as Senator Mathias said, "They just slunk away in the middle of the night." That's what we want to prevent. And I think we are doing so in a fair-minded way by not be restricting the value of the franchise, but by saying that if the community can come up with an offer that is the equivalent to an offer made by others, then that community will be able to—"community," somebody within, will be able to retain the team.

I might say that to the best of my knowledge very fruitful negotiations are going on here in the community, and exactly what we are trying to achieve in this legislation may well be done in Minneapolis, and the team will be retained.

An effort is being made to sell tickets and to do other things, an effort that has not received the cooperation of the owner of the team at all times, but, I think progress is being made. We may be coming to the same result that this legislation really desires.

So, once again, I appreciate your coming to Minnesota to listen to our particular situation. But that situation has to be put into the perspective of the entire legislation. The entire legislation is not to see a decline in values of sports franchises; that's not the purpose.

The entire object of this is to see that the communities that have made investments will be able to protect their investments, just as the owner of the team will have made investments and should be able to protect their investments.

Once again, I appreciate your coming here today, and I look forward to participating in the rest of this hearing.

Senator GORTON. Thank you.

Jann, I wonder if I could ask you a question or two.

You described, I think, quite accurately, the history of the unique antitrust exemption, of which major league baseball is the beneficiary. In this respect, however, in respect of the problem with which we are dealing with right now in the arbitrary movement of major league sports franchises, is that antitrust exemption an advantage to a community, or a disadvantage? These last two most notorious moves have been a National Football League move, and in the case of the Colts, the testimony of the National Football League was to the effect that it would like to have prevented that move, but felt that it could not do so because of antitrust laws. How does that impact on baseball and on this particular situation?

Mr. OLSTEN. Well, certainly, Mr. Chairman, in terms of communities' interest, the antitrust exemption, in effect, allows the league to impose some controls over movement, over transferring a team. So, in the extent that that antitrust exemption remains, that gives major league baseball the right to restrict the movement of the teams, and I suspect—I certainly can't speak for major league baseball, but I suspect that they would be much more comfortable seeing that the antitrust status is firmed up and clarified, which would also be the advantage of the communities. As long as the Twin Cities knows that major league baseball as a unit has the authority to control the movement or restrict that movement, it certainly is to its advantage, as long as that control is reasonably imposed.

Senator GORTON. Thank you. We will now hear from the first of the series of panels from the city of Minneapolis: Mayor Fraser, Alderman Schulstad, and Alderman Scallon. If you will all come forward?

Mayor, I am delighted to see you again for the second time, and will be very pleased to hear from you.

STATEMENTS OF HON. DONALD FRASER, MAYOR, DENNIS SCHULSTAD; AND TONY SCALLON, ALDERMEN, CITY OF MINNEAPOLIS, MN

Mayor FRASER. Thank you very much, Mr. Chairman. Because I did take advantage of the opportunity to appear at the hearing which was held in Washington a few weeks ago, I won't make an effort to repeat my testimony. I wanted, however, to come and express my personal thanks for the effort you're making, along with Senator Boschwitz, to be here in Minneapolis to listen to our story.

When I testified a few weeks ago, I indicated some doubt about our ability to respond to the requirements of the lease which we have with the Twins, but I did refer to the fact that in our community we operate very strongly on the basis of partnerships among business and labor and neighborhoods and city hall. That's been very much at work in our community, but I was wondering where the fifth partner, the franchise owner, was. In the meantime, the rest of the partnership, led by some of the people you'll hear from today, has been making very energetic and, I hope, successful efforts to improve our bargaining position in an effort to hold the Twins here. So, you'll hear from them, and I won't attempt to anticipate their testimony; mostly I wanted you to know that we really do appreciate your interest and concern. We do need a fair system, which I think is what you and Senator Boschwitz are after: a fair scheme to address the kinds of issues which are brought forward as when the Colts leave in the middle of the night. I thought the testimony which you heard a few weeks ago was quite poignant, and it conveyed very well, I think, the frustration the community has experienced. The bonding that goes on between the team and the community ought to be worth something. So we are really looking for the rule of reason, but I think that rule will only be developed through appropriate legislation, and I'm delighted that you're working on that problem.

Thank you very much.

Senator GORTON. Thank you.

Alderman Schulstad.

Mr. SCHULSTAD. Senator, we welcome you to Minneapolis. As Senator Boschwitz so ably stated, and I agree with him wholeheartedly, I'm a firm believer in the free-enterprise system, and I'm one who has traditionally fought any type of government regulations and government restrictions placed on business. And as I was thinking about what I was going to say today, I was discussing it with somebody, and they said, "How can you, as a good Republican, who believes in the free-enterprise system, be talking about putting more restrictions on business?" And I had to think about that for a while. But, of course, the answer is that, unlike most businesses, as Senator Boschwitz so ably put it, the public did build the stadium. And we also have the unique situation of having a very limited commodity, and that's not the case in the free-enterprise market.

I'm speaking today because I'm a fifth term member of this Minneapolis City Council, and I was here all through the negotiations that were going on when we chose to build the stadium in Minneapolis. And I would like to share some of the history and some of

the background of how that decision was made and why that decision was made.

We had, in Bloomington, MN, a stadium called Metropolitan Stadium. It was built 20 years ago for the Minnesota Twins.

Senator GORTON. We just flew over that. Is it used for anything any more?

Mr. SCHULSTAD. It's going to be torn down and it's going to be a very major development in the future. Office development, we believe.

But in its day, that was a fine baseball stadium. It was built for the Minnesota Twins. We did not have a professional football team at the time, and it was a very good baseball facility. It was a very bad football facility. The seats could not be moved. And when you build a multipurpose stadium, you build it so seats can be moved.

One of the options that we had when the Minnesota Vikings and Twins came to us, saying that this was inadequate, and it was particularly the Vikings, and they were right. It was inadequate for professional football. It was by far the poorest stadium in the entire National Football League for a football team. One option we had would not have cost us very much money, and that was to rehabilitate Memorial Stadium at the University of Minnesota, a stadium that seated approximately 60,000 people. It was built for football. It was not a domed stadium, but it was one that was adequate for football, and with a few million dollars, could have been turned into a first-class facility that could have housed both the Minnesota Gophers and the Minnesota Vikings, thus leaving the Twins in a very adequate stadium that was designed and built for baseball. That was not good enough for the ownership of the Minnesota Twins. They said that they must have a domed stadium so people can plan weeks in advance when they will be coming to a game, without any fear of being rained out, and that the stadium must be built in the heart of the metropolitan area. They wanted people to be able to leave work early, to travel by public bus and public transportation, to and from Minneapolis. And they said: The only way that they would be profitable and the only way they would stay in our State was if we were to build this dome, first-class baseball and football facility, in the heart of the metropolitan area.

Many people, including myself, questioned the wisdom of that decision. We talked to the owner of the team, and we said that many people like to see a game outside, not in a domed facility, on a nice day. And we also questioned whether that stadium should be in the downtown area for the baseball team. We were assured, without any question, that we run the city council, and he runs the baseball team, and he knows much more about marketing than we do, and that it was the domed stadium in downtown Minneapolis that was going to save the franchise. Without it, he would move. With it, he would be here forever. That was 3 years ago.

The city council then discussed with the legislature, with the business community, with our constituents, the wisdom of having the stadium downtown. And ultimately we decided that it was so imperative for this community to keep both major league football and major league baseball that we would commit to building that stadium. Fortunately, we did not have to commit our property tax dollars. We are in much better shape than many communities that

have pledged their public property tax dollars, but what we did is commit our businesses, and you will hear from some of these businesses later, to paying a 3-percent tax or more to help finance this stadium. And obviously the Federal Government played a major role in it, because bonds were sold that were tax free, so the Federal Government did participate.

So, we built the stadium, and it is one of the finest stadiums in the United States, and it is domed, as was demanded, and it is in the heart of the metropolitan area, as was demanded, and now the rules have changed, and we are very frustrated about this change. We feel that we kept our part of the bargain, but, of course, now there is a bidding war for these teams, and all of the rules are out the window, and no longer is it good business judgment that determines what the value of a team is; rather, because there is such a limited commodity, and such great demand, we find that the prices that are being charged go way beyond what good business practice would dictate. So, for that reason only areas that would have a multimillionaire who is willing to, quite possibly, lose a lot of money to keep the team would be able to have a team in their area. We think that is unfair, because we did keep our part of the bargain.

So, we find that there really are only two solutions. One is to expand the market and greatly increase the number of teams available, and the other is to pass a bill like yours and Senator Boschwitz's. I don't think the market is going to be expanded. I don't think the number of teams will be greatly increased. And that leaves, by far, the best solution, being the bill that is before us today. I speak wholeheartedly in favor of it.

We thank you very much for coming to Minneapolis and showing your interest. The public in Minneapolis and in many other cities that are being faced with this same situation applaud you for your efforts. Thank you very much.

Senator GORTON. Thank you.

Alderman Scallon.

Mr. SCALLON. I would like to, for the record, do one little thing, and that is, I am Tony Scallon, council member for the city of Minneapolis. I am representing president Alice Rainville, who is president of our city council. We have a majority of women on the city council of Minneapolis, one of the very few municipalities, and we are called council members, and I would not be allowed back sitting up where Senator Gorton is sitting right now if I did not correct that.

Senator GORTON. We stand corrected.

Mr. SCALLON. Yes. Thank you for that.

And I would like to welcome you to Minneapolis and to the Twin Cities and our metropolitan area. We, as you know, are very proud of our metropolitan area. We are proud of our two downtowns, and we are proud of some of our merging areas such as Bloomington and some of the suburban areas that we have in our community. And we are participating today to hopefully also welcome the other sports that I hear are here today, including the basketball and including the baseball leadership in our country to enjoy our area. We are sports fans. We are strong advocates of having sports in Minnesota. And I hope you will enjoy it.

I will give you a little different perspective. I have not been on the city council as long as council member Schulstad. In the debates I took opposite positions on many issues, and still do, but we have one united fervor, and that is to keep sports' viability in our metropolitan area. And I think I have intricately, maybe more intricately than I ever expected, as a person who didn't vote for the downtown domed stadium, in maintaining the viability of sports in Minnesota, especially to the effort that our business community has put together to keep baseball in Minnesota.

I just want to state that what I really feel strongly about, and in welcoming both Senator Boschwitz and Senator Gorton here, is the idea the community interest belongs in the sports decision. I think that is a very good idea. I am glad someone is putting it in legislation, and I would be more than happy to be here to testify that I think our city and our community feels that that is what should happen in the process.

If you are watching us very closely, and I don't know how much coverage is coming in our Twin Cities area, as you can see, the media is doing an excellent, maybe a superb, but maybe extraordinary job of covering every step in this process. And we are following, as Senator Boschwitz said, some of the tenants, if we can have the right to have those tenants that he has in the bill, we are attempting, through a community interest, to find a way to keep the team in Minnesota if it is, so we are attempting to keep the team here in a public-private partnership, which we are very famous for and which we are very proud of.

I would hope that all members of the council will participate in that public-private partnership in the next couple of weeks, but our stadium commission representing the public and our business community representing our business community, the downtown council and the chamber of commerce and different individual business people, I think, are doing an excellent job working on this, both the opportunity to buy the Twins, individually, maybe the opportunity to keep the existing team here through ticket sales, and I think that the bill really speaks to that issue, and that every community should have the opportunity to do that. We wish the opportunity would go to other communities and not to us, but we accept our responsibilities.

I want to point out that what is really needed is to remember that this federally protected area is a large enterprise, up to \$22 million in yearly income, possibly, to a metropolitan area. I would like to say that it is really, really important that that area, if it is protected in Federal courts and protected to the rights that they have, that the community be protected. And I give that community perspective, and I am really proud of our community, what we have tried to do. We all hope that we hit our goals and that we are successful. And I urge you to listen to our business community and to know that our public-private partnership is working, but I think it would work a little bit better if there was a statute that would allow us to follow some kind of Federal guidelines. We are sort of operating here on the luck of the contract and not on any other kind of provisions. And that contract, as you can see in the paper, is a very tough contract to meet. We have been working on it for months.

The other little thing I would like to do is thank the Senate and some of the municipalities after last week. We would love to have an exemption from the antitrust laws also. So, if that keeps moving, that Senator Thurmond's bill, and I think Senator Boschwitz has been very supportive of us on that.

Senator BOSCHWITZ. We will take care of that.

Mr. SCALLON. Thank you. I just want to say that would be a nice exemption after this week.

Thank you very much.

Senator GORTON. Is the domed stadium utilized now by any sports franchises other than baseball and football?

Mr. SCHULSTAD. Yes, Mr. Chairman, we just have a new American Soccer League soccer team that has moved into our area and, in fact, this evening will be the first game they will be playing in the domed stadium.

Senator GORTON. Is this stadium owned and is it a burden on the taxpayers only of the city of Minneapolis, or does it go beyond that to the county or other communities like St. Paul as well?

Mayor FRASER. It is just on the city of Minneapolis. The bonds, technically, are issued by the metropolitan council, but the supporting revenues are generated from the tax imposed on sale of liquor and on hotels and motels located physically within the city of Minneapolis.

Mr. SCHULSTAD. But not as a whole on the taxpaying property, property taxpaying basis; that is totally clear.

Senator GORTON. Yes. Are major league sports, or sports in general, treated any differently than other amusements, theaters and the like, from the point of view of either local or State taxes?

Mayor FRASER. I think perhaps the stadium commission which is represented here, can answer that.

Senator GORTON. I am interested in the difference between the lease arrangements involving the National Football League, namely the Vikings, and the baseball team. How did it come about that there is a long and, I gather, unbreakable lease with the Vikings, but is relatively short-term lease, at least subject to attendance conditions, with the Twins?

Mayor FRASER. Jerry Bell, who is here, can give you the history of those negotiations. My understanding is that the Twins insisted on a provision of that kind and it was a condition of their entry into the lease.

Mr. SCALLON. It is interesting, that provision. The only time that provision has ever been met, if you follow the long history of 1.4 million attendees, was when the World Series that—we were in the World Series that Senator Boschwitz alluded to, that is a pretty high requirement, in terms of most baseball—I think it is a fairly large attendance for any baseball—

Senator GORTON. It is a fairly large attendance, but presumably someone, I guess the stadium commission, signed it at one point or another in the history.

I have been impressed, even, of the distance between here and Washington, DC, with the kind of community backing which has appeared during the course of the last year with respect to attaining the Twins.

I wonder if any of you want to make a specific kind of comment on that?

I guess the Mayor did in one sense, but you might add to that.

How has that been put together? Who is spearheading it? What is your impression of it? And how broad a community support it represents?

Mayor FRAZER. The Greater Minneapolis Chamber of Commerce took the lead and established a task force on this, headed by Merlin Dewing, who is here. It included representation from every group within the community, and undertook a very extensive study of the general problem of marketing for the Twins, looked at what other communities were doing, and came up with a very thoughtful and, I think, a very detailed report. They then launched a major marketing effort, to which the city has contributed directly with tax funds.

But I think what happened is that as time went on, there was more appreciation for the difficulties the American League faced. The impression at first was that the American League, if a genuine effort were being made in the community here, would not have sanctioned the removal of the team from the community. But as time went on, I think that view came into question, and so the belief emerged that—

Senator GORTON. That was going to be my next question. I would like to expand on what kind of contacts you have had with the American League, and what kind of attitudes seem to—

Mayor FRAZER. You have here Merlin Dewing, who is the Chairman of the Task Force, who could give you the firsthand report. It began to be realized that unless we met the conditions of the lease with respect to ticket sales, we ran a very large risk that the team was going to move.

Harvey Mackay, here, has taken a lead and has done a very effective job. We hope there is some prospect that his efforts will succeed. It's been a struggle and he has had to go out and elicit support of all kinds of folks in the community, and I think, on the whole, they have given it to him. But it has been a major undertaking.

Senator GORTON. Senator Boschwitz.

Mr. SCALLON. I think that was one of the—you know, when you think about it, part of the provision of the bill that Senator Boschwitz has of the community being notified, you understand that we in this whole process are sort of second.

Every time you ask us a different question, we say: Well, Harvey Mackay is coming up here or someone else is coming up here. We are really operating as almost like among the business community in this situation, even though we are the community that has the liquor tax assessment, is paying for the stadium; even though we have the investment and the worry that we will lose the income.

We really don't get any full notification of what is really going on and what the real provisions are, and that is why I have some interest just on the notification parts of that bill. We are learning secondhand, and working hard, but our business community, luckily, has had some perspective, does have some time to work on it.

Like the Baltimore situation, which they didn't seem to have much time to really work on it. In this situation we have had some

time. But there has been no real inner connection. That is kind of unusual, because in Minnesota we have had to do things public and private with everyone notified.

And, in fact, some of the work I have done lately has been criticized because it hadn't been public. Well, you can't make things public that you don't get any public notice of or public information that you can share. It is really pretty difficult.

Senator GORTON. Senator Boschwitz.

Senator BOSCHWITZ. Mr. Mayor and council members, we want to legislate, really not to suit a specific need or a specific problem, but we want to retain values of franchises and we want to also maintain and protect the interests of communities involved.

In your judgment, are we unbalancing the relationship between the league or between the owners of the franchise and the city or the municipalities involved?

Are we still treating that relationship fairly in this bill?

Mr. SCHULSTAD. Mr. Chairman and Senator Boschwitz, I would respond by saying that right now the balance is totally 100 percent controlled by the owner of the team. What this legislation does is make a certain amount of balance. It says that the owner cannot move just because there might be greener pastures elsewhere if the pastures are already pretty green where you are. And so there is an obligation by the local community, but it does establish a good balance, so I think it is very good.

Mayor FRASER. I would add, Mr. Chairman, Senator Boschwitz, that I think that your bill as drafted is more than fair to the franchise owners. As you pointed out, it does not in any way diminish the value of the franchise; it gives the people, the community, only the right of first refusal.

The thing that is striking about this process is that no matter how well or poorly a team is managed, the value or the franchise seems almost independent. And as competition across the United States grows to get these teams, the values are likely to keep escalating situations which suggest that this isn't exactly a free enterprise. Normally, if you don't manage a business too well, it isn't worth that much. Here is quite a different circumstance. And except for the fact that you are addressing a very specific problem which besets a number of communities, an argument could be made, I think, for an even more comprehensive framework. But this might require far more effort than could be justified at this point.

Senator BOSCHWITZ. We have spoken a good deal about the stadium that has been built here, and Senator Gorton did not have the opportunity to see it on the way in. We'll see to it that he at least passes by it on the way out of town. It is only three or four blocks away. Senator, it was quite an effort to build the stadium of that scope here in the middle of the city.

We have talked only about the costs to the city. I wonder if one of you gentlemen could tell us some of the other costs the community became involved in in order to place the stadium in the midst of the most populated area of the State.

Mr. SCALLON. I think that was alluded to by Councilman Schulstad. The business community contributed, I think, up to around \$17 million of their own funds to buy and purchase the land, and

we gave them some rights in exchange for development around the stadium, which hasn't been extensive, by the way. Most of that money was contributed by our business, was done with the interest of getting the stadium in downtown Minneapolis. It was done by the downtown business community, so there is quite a stake by the business community in and of itself, separate from our Government structure, and separate from our liquor tax which we have attached to the entertainment business.

There has been quite an effort—if you will look at the liquor tax, I almost felt our liquor tax is not a real tax. It is really an assessment on those people who go to bars to pay for the stadium. It is not something—I don't—in my younger days I would have paid for the taxes; in my older days I am going to pay less. I am not—

Senator BOSCHWITZ. At what stage are you?

Mr. SCALLON. There is a rumor that this year I am staying 39 and keeping 39, so that is what stage I am at, but that stage, fortunately, for my income, changed about the time they built the stadium. But the reality is that there is quite an investment by our liquor and hotel and entertainment industry.

Senator BOSCHWITZ. What about roads and other—

Mr. SCALLON. Yes, there are a number of roadways; maybe Council Member Schulstad is more of an expert on the roadway system. I just want to mention, too, that there is quite a commitment, when you go look at liquor tax, and the reason I bring that up is because, back to the earlier thing, we feel that the Twins may attract, into Minneapolis, Twin City areas, up to \$22 million of money that is spent, which then is translated into jobs, more than just a direct job to the stadium, which we have asked, and include low and moderate income people in minority communities which do live right around the stadium, but just the whole commitment, in terms of jobs that that \$22 million industry might give, 10,000 people walk into restaurants in downtown Minneapolis, bars, hotels, all those kinds of things, that are quite an important issue, but in terms of real investment on the roadways, I think Council Member Schulstad could fill you in on that matter.

Mr. SCHULSTAD. Mr. Chairman, Senator Boschwitz, I would say that we did reroute or close three different streets in downtown Minneapolis, but far more than that what the public commitment is is four square blocks of prime land in downtown Minneapolis is now being used for that stadium. Now, we felt that was a good tradeoff, because by having that stadium, and by having the major league teams inside of it, we are hoping to encourage a lot of development across the street and to the surrounding blocks. If that stadium loses one or more of the major tenants, then you don't get that spinoff development, and the four blocks of valuable real estate downtown that would otherwise be paying high taxes will not be doing that.

Senator GORTON. Wouldn't there be a parking problem there?

Mr. SCHULSTAD. Parking is not a problem because we are able to schedule games when we don't have the general public downtown working. So, the cars that are downtown Monday through Friday from 8 o'clock until 4 o'clock are gone on the weekends and on the evenings, and the people who are using the stadium use that parking.

And, in fact, a full house only uses about half of the parking that is used every other day, Monday through Friday. If we were to have a Viking game on a Friday afternoon, then we would have a problem. But that, of course, is never going to happen.

Mr. SCALLON. The other thing is those ramps. We pay lease payments, compensation to the stadium commission, of \$400,000 a year, which comes from the operation of those ramps. That is paid to our stadium commission in lieu of what parking rights and fees they give out to in the Metropolitan Stadium, and so there is some actual parking revenue from, that comes from parking users in the downtown Minneapolis, either from the stadium, if not from the stadium, from whatever parking revenue users are in downtown Minneapolis. We own, in downtown Minneapolis, I think over half of the ramps, the city of Minneapolis. We own the ramps that are closest to the stadium, the three ramps where most people park. There is one kitty-corner, and then there is the one, two, three, right in here; we own those ramps. In fact, we want to thank the Federal Government for some of those ramps we own because they have helped us to own those ramps, but the revenue from those is required, regardless of what teams are in the community, as part of that whole requirement the community had to go through. And I forgot that, Senator Boschwitz, that that is an ongoing cost, I think, for at least 4 or 5 more years.

Senator BOSCHWITZ. I was trying to elicit from you, Mr. Mayor and the council members, that the expenses that the community undertook to bring the stadium downtown and to retain and maintain its commitment with respect to the baseball team and the other sports franchises exceeded the \$55 million that it cost to build a stadium. It also included \$17 million contributed by various businesses in the community to buy the land, and it also included costs of relocation thoroughfares, as Council Member Schulstad has pointed out, and furthermore, there was presumed rather extensive business investments, either by way of hotels, motels, restaurants, accompanying businesses, so that many have relied on the presence of the Twins. Mr. Schulstad, could you tell us what did the Twins say at the time that this new stadium was built? You said in your testimony it would stay forever. I wonder if you could expand on that for just a moment.

Mr. SCHULSTAD. We were dealing with the ownership of the Minnesota Twins, but we did not write the contract that they signed for the stadium, and had I been one of those writing the contract, I would not have gone along with that agreement. That was the question that was asked by Senator Gorton earlier. We were definitely led to believe that if no stadium were to be built, they were gone. If a stadium was built downtown, they would stay as long as American League baseball or National League baseball is still operating in the United States, and that any leases that were signed would merely be formalities so they could get as much money as possible. But we didn't have to worry about them ever leaving. Unfortunately, the contract that was finally negotiated did not exactly say that. But when we decided to build the stadium, we were told they would be here forever.

Senator BOSCHWITZ. Thank you, gentlemen.

Senator GORTON. I thank all three of you for your very helpful testimony.

We are now delighted to hear from Dr. Robert W. Brown, president of the American Baseball League. If he will come forward.

[Following are the names of the panel: Dr. Robert W. Brown; James Garner.]

Senator GORTON. Dr. Brown, I want to offer you a special welcome here today. I have confessed that if I ever rooted for the Yankees in any baseball game, it is a mistake in my memory, but while I was a student in New York, I was a great fan and admirer of yours, and I have been an admirer of your career ever since. And I would like to offer you my personal congratulations on this, your new presidency. I think the American League is going to be very, very well served by your presidency of that league.

STATEMENT OF DR. ROBERT W. BROWN, PRESIDENT, AMERICAN BASEBALL LEAGUE, ACCOMPANIED BY JAMES GARNER, COUNSEL

Dr. BROWN. Mr. Chairman, you're very kind. We are delighted to be here. I would like to introduce the American League counsel Jim Garner to you and the people here.

Senator GORTON. He is welcome as well.

Dr. BROWN. Thank you. I think, before I read my statement, I would also like to tell you: I was born in Seattle and know more, probably, about Seattle baseball in the 1930's and 1940's than any of you can imagine, but I was very connected with it, as far as a fan is concerned.

I'm delighted to be here, delighted that the Senator invited us.

Senator BOSCHWITZ. Do you have a copy of your statement, Mr. Brown?

Dr. BROWN. This is merely a draft. We can certainly have some made up, if you would like.

Senator BOSCHWITZ. OK.

Dr. BROWN. I'm Dr. Robert W. Brown. I am president of the American League of Professional Baseball Clubs. I appreciate the opportunity to testify before you today on S. 2505, the Professional Sports Team Community Protection Act.

Baseball's views on this bill have already been provided to the committee in a detailed written statement submitted in conjunction with the hearings held on April 27, in Washington, DC. I would simply like to emphasize again some of the major points regarding baseball's position on this legislation.

Baseball, like members of this committee and other witnesses who have testified before you, is deeply concerned with franchise stability. Baseball has long been committed to a policy of retaining teams in their home areas if at all possible and we believe that our record on this score is quite strong. Of the 10 metropolitan areas where baseball had franchises at the turn of the century, 9 of these areas still have franchises today, over 80 years later. Furthermore, of the 10 expansion teams created in baseball, 8 have continued to play their home games in the same area. Out of the two cities that lost an expansion team, namely Seattle, baseball was later able to place a new franchise there. Indeed, the only area that once had a

team, but no longer does is Washington, DC, where the Minnesota Twins' franchise originated. It is clear, then, that baseball's management has demonstrated, over the course of many years, a solid commitment to franchise stability and to the protection of fans and community interests. This record in which we take great pride is no accident. Baseball has established a set of rules and regulations which create a strong presumption against the relocation of franchises. First, each league has as part of its constitution a requirement that no change in location can occur without the consent of three-fourths of all the members of that league. We have also added, last year, the requirement that a majority of the clubs in the other league must support the relocation as well. In addition to these league procedures, the commissioner also plays a role in league relocation decisions. He is empowered to investigate any act which is charged or suspected not to be in the best interests of baseball. Accordingly, he would evaluate all aspects of a possible relocation. He would consider, among other things, the interests of the home community, the support and commitment that that community has given to its franchise, the effect a move may have on the structure of the league and on traditional rivalries, and if a proposed sale is also involved in the franchise move, the integrity and the financial stability of the new owner. In short, any franchise proposing to relocate to a new area must make a strong case for doing so. We believe that the above procedures work well in baseball, and that there is no need to federalize the process of franchise movement, which is essentially what S. 2505 does.

S. 2505 calls for a professional sports team arbitration board, constituted in an ad hoc fashion, with the arbitrator appointed by the Secretary of Commerce, ultimately, to control franchise moves. The board will prevent a relocation whenever it determines that an offer to retain the franchise in its home community is equal to or greater in value than the proposed relocation. Indeed, the only criteria for the board's decision is its assessment of the bottom line financial value of the offers. Ironically, by reducing the board's decision to a one-dimensional financial test, S. 2505 may actually do a disservice to the objective of franchise stability. It is those franchises which are experiencing financial difficulty that are usually the ones most likely to seek relocation.

Instituting a financial test alone will merely encourage relocation rather than prevent it. The considerations relevant to relocation decisions must be much broader. For example, in baseball, the commissioner, as well as the league, could block the sale and relocation of a franchise if there were a question with regard to the integrity of the new owner relating, perhaps, to its past conduct or associations. S. 2505 does not take these issues of integrity into account. Moreover, in baseball, it could also block a sale if the individual making the offer did not meet certain criteria of financial stability.

While it would be unwise and improper for Congress to delegate such broad discretion to an arbitration board, it is most appropriate for the sports leagues to be able to exercise these sorts of judgments in evaluating proposed relocations. There is already a strong incentive within the sports leagues to franchise stability. Baseball

has acted in a responsible fashion, and I am confident they will continue to do so.

Senator GORTON. Dr. Brown, this question could be either for you or for Mr. Garner.

I know that you have followed the problems of the National Football League in respect to its rules relating to the franchise transfers.

Is there any concern on your part that the rather historic nature of the baseball antitrust immunity and orientation toward relationships between clubs and players might not hold up in the case of a suit like that of Al Davis, one owner against the league or against his fellow owners, in respect to a transfer of a franchise?

Mr. GARNER. If I understand your question, Mr. Chairman, it would be our view that the antitrust immunity that baseball enjoys would permit baseball to operate as that in the Al Davis situation.

Senator GORTON. I am sure that it is your view, and obviously, it has to be your position. Has it ever concerned you, is that likely to have any impact on the league and on other members that they deal with an application to move a franchise, a fear that it might not win such a lawsuit?

Mr. GARNER. Well, I would like to believe, Mr. Chairman, that these matters will be considered on the merits of the move contemplated at the time.

Senator GORTON. With respect to the specific situation with which this community is faced, the Minnesota Twins, Dr. Brown, I guess I should go to you with this question: Have you followed with this situation, with the campaign here, with any significant attention? Do you feel that likely there may be an attempt to move this team if the attendance clauses of the contract are not filled this year?

Dr. BROWN. I think the sentiment in the American League at the present time is against any franchise moves.

I think the sentiment in the American League in regards to the Twin Cities area is that it is an extremely viable one, and that all of our efforts have been more or less directed in that direction. We have had two major concerns. First, we have long recognized that if the Griffith family has indicated a desire to sell, that they be able to obtain a fair and competitive bid for their franchise. Hopefully we would like that bid to come from local interests, and that those two objectives can be attained. If either of those objectives, of course, couldn't be attained, we might be faced with some problems, but it would take, as I said, three-fourths of a vote of our league, and the majority vote of the National League, to bring about any kind of a transfer. Certainly there is no sentiment that I know of, at this time, in favor of a transfer, unless it was absolutely forced on us.

Senator GORTON. Is it not the case that more than 40 percent of the ownership interest in this team has already been sold to persons outside of the Twin Cities area?

Dr. BROWN. This is what we have been told. Now, we have not gotten any official papers, notifying us of that fact, but I think that is quite true.

Senator GORTON. Are you required to approve the ownership transfer, even—

Dr. BROWN. Yes, the American League, in its constitution, must approve of that transfer. The president has, to OK it, or he can ask for a league vote and the latter will transpire. The commissioner also has the power to decide if an amount of stock being transferred is of sufficient size that it would affect the ability of the controlling interest to manage the franchise. If that is the case he can require the league in which the transfer is occurring to pass it by a three-fourths majority and the other league to pass it by a simple majority. That decision is forthcoming.

So, at this particular juncture the American League will have to sanction that particular stock transfer, if it has been effected, and is quite possible the National League will also be involved.

So, you have got a double-pronged effect, probably, that will go into play.

Senator GORTON. Obviously the question of ownership and location are several questions, are they not? I mean, the team in Seattle is not locally owned. How many of the teams in the American League are owned primarily by interests outside of the cities of which they play?

Dr. BROWN. I am not sure I can answer that off the top of my head. Let me just try to run down through them. I think Boston has, essentially, local ownership with the Yawkey interests.

The New York Yankees are owned by George Steinbrenner, who resides in Florida, but spends a good bit of his time in New York.

The Baltimore franchise is owned by Edward Bennett Williams, who resides in Washington, but is close to Baltimore.

Kansas City interests are owned locally; Texas interests are owned locally; the White Sox interests are owned locally; Milwaukee interests are owned locally; Toronto interests are owned locally; Minnesota, owned locally, California, owned locally; the Oakland interest, owned locally; Seattle, I guess, would be not local; Detroit, owned locally; Cleveland owned locally; so all—

Senator GORTON. Did the Griffiths live in Washington, DC, when they owned the Senators?

Dr. BROWN. Yes.

Senator GORTON. I would like to follow on, however.

Have you had any contacts, formal or informal, direct or indirect, with the present ownership of the Twins, even relating to the subject of a possible move of the team?

Dr. BROWN. The possible move has not been specifically mentioned. Most all of our conversations have been with some of the current procedures regarding a possible sale.

And we have tried to work with them as closely as possible, and have encouraged them to explore all of their local options before looking elsewhere.

Senator GORTON. Mr. Garner expressed confidence in the enforceability of the major baseball league rule relating to franchiseships.

And do either or both of you believe that non-major league baseball leagues clearly have the tools which they need to restrict the arbitrary transfer of teams without good reason, from one city to another?

Dr. BROWN. Mr. Chairman, I think you need to restate that again. I am not sure—

Senator GORTON. Football, hockey, and basketball are in the same situations.

Do you think they have adequate tools to prevent arbitrary moves?

Dr. BROWN. I would guess, at this point, from reading the papers, they don't. Because they are apparently moving.

Mr. GARNER. No, I would only add, Mr. Chairman, I think it has been demonstrated by the indication of the football league they do not have the necessary tools.

Senator GORTON. So you are in a uniquely favorable situation?

Dr. BROWN. That is right.

Mr. GARNER. Yes, sir.

Senator GORTON. All right, Senator Boschwitz.

Senator Boschwitz, I would like to get the opinion of Mr. Olsten, Mr. Chairman.

Mr. OLSTEN. Thank you, Senator.

Perhaps more by way of observation, and Mr. Garner may choose to comment on it or not, but it seems to me, following up on the chairman's line of questioning, that regardless of how confident major league baseball may feel about its antitrust status today, recent events must give rise to some concern, and it seems to me that without this legislation Calvin Griffith has the best of both worlds.

That, on the one hand, a good deal of the value of his franchise is due to the fact that baseball has been exempt from the antitrust laws.

By the same token, if he chooses to move the team and sell to the highest bidder, and if baseball tries to stop him by its self-imposed rules, he may well take an Al Davis approach and claim that antitrust laws do apply and, therefore, cannot prevent him from moving.

So, on the one hand, because of the rather tenuous situation today, he has the benefits of the antitrust exemption, and yet, because of the Al Davis suit, in pro football, maybe he will argue that the antitrust laws shouldn't prevent him from selling to the highest bidder, getting the advantage of both, from the exemption and the application of the law.

Mr. GARNER. I believe that in a situation you suggest that baseball has probably more vigorously than almost any other context would seek to protect its antitrust immunity. It would be equally vigorous in protecting it from a—

Senator BOSCHWITZ. I gather, Dr. Brown, that you feel you can police your own league, and therefore you can further operate without this bill as you have over the years.

I looked at the bill briefly as you have testified, and it is not clear to me, Mr. Chairman, that this bill only refers to an actual attribute, that a sale will only be judged in that way.

I notice that the board is supposed to take evidence regarding any such proposed relocation or offer to retain. The language is quite broad.

On the other hand, I also notice that it states later on that the board shall have no jurisdiction with respect to any other terms of the sale of such teams.

Would the bill be more to your liking if we were to expand some of the language and involve the arbitration panel and other parts of the transfer other than just the financial aspects of it. Would that improve the bill?

Dr. BROWN. I think that that may certainly enhance some of the features of the bill that is now under study.

Again, I would suspect that if this were a cooperative effort, it would take a lot of work on both the part of baseball and the staffs of the Senators, to come up with something that would be feasible.

I think the thing that we are trying to get over is that we are not, in essence, in favor of franchise transfers. I don't think anybody wants to see a franchise move.

All of our mechanics and all of our rules and regulations have been formulated to prevent franchises from moving. We don't like to see teams jumping around the country. We discourage it. We will continue to discourage it.

We have not been supportive, as far as the Twins are concerned, to move anywhere else, but have encouraged them to stay here as long as they can get an offer that is reasonable and competitive.

I think that we go on record as saying that, we recognize that there are other areas of the country that are fine areas and are interested in baseball, but, we don't think we should deprive a community from an entity that they can appreciate, as long as they show the ability to appreciate it.

Senator BOSCHWITZ. What you are stating is that you are conducting your affairs already, as the bill would say you should?

Dr. BROWN. Even more so. We are trying to vigorously do all we can, both with our moral support, as well as our legal support, to keep the franchise from moving.

Senator BOSCHWITZ. Therefore, I really would suggest to you and your counsel and others that this bill may well become law, and in the event that you want other items considered by the arbitration panel, that I hope you do work with our staff and the Senators so that we can make the bill as constructive as possible. The bill has some advantages for other sports, that are not necessarily for baseball, which already has an antitrust exemption. The other sports do not. This bill, among other things, grants such an exemption, and therefore, perhaps will even enhance some of the values of the other franchises. So I'm pleased to hear that you are deeply concerned with franchise stability; you repeated that and other language of that nature a number of times. And that, I think, should be very satisfying and hopeful to people of our community, even as various people in this community make an effort to do just what you are suggesting, and that is keep the team here.

There is no need to federalize it, so, therefore, am I lead to ask the most important question of all: Am I to understand from your testimony, therefore, that if local buyers are willing and able to purchase the Twins, and if Calvin Griffith, thereupon, sold it to Tampa anyway, that in your opinion, the American League would still require the Minnesota Twins to stay here in Minnesota if there were a viable and existing buyer here?

Dr. BROWN. I can't speak for all of the owners, but I can only say that the weightiest consideration would be given to a local proposal

that was competitive with a bid from another area, before granting permission to transfer a franchise indiscriminately.

Senator BOSCHWITZ. Well, we don't mean to be critical either, as Senators, or perhaps in my case, as a citizen of the local community, but the weightiest considerations may not be good enough, because this community, others like it, the business community has spent \$15, \$20 million to purchase this site; the community has indebted itself and its citizens for a multiple of that; businessmen and others have made large commitments, and that would be undermined, and it is very difficult for the legislature to say: Well, don't worry; the American League will give weighty consideration to any offer or any desire to move the franchise, inasmuch as the public has such a broad interest in this and inasmuch as the public makes such a broad financial involvement in the process, it may not be enough. How would you respond to that?

Mr. GARNER. I believe perhaps Dr. Brown had in mind some of the other factors that the league considers: the identity with respect to purchasers and the like. I would address only one bit of recent history, and that is the case of the Chicago White Sox, where there were bids, White Sox club selling to shareholders, the desire to sell some out of town, he professed that he was going to maintain the club in Chicago, but I am not sure everybody believed that. There was also a local offer at the insistence of the league, the offer from the out-of-towner, and on that basis, contrary to the desire of the White Sox sellers, the only sale that was approved was to the local ownership.

Senator BOSCHWITZ. Therefore, I repeat, as I stated earlier, your league is already operating as the bill would seek to have others operate.

Mr. GARNER. I think at least, and perhaps a little bit more, as Dr. Brown has suggested. At least I believe the ability is there in the league to—

Senator BOSCHWITZ. Once again I suggest that perhaps we can incorporate that little bit more language in the legislation so that, Mr. Garner, I would hope that you, in your experience and background, would participate.

Senator GORTON. Senator Boschwitz had made a very important point, and I would like to say even the draft that you are dealing with today causes you to labor under difficulties because it has been evolving, as we have heard from you and from player representatives and from the other league, that to this point I should have to say that we have had constant and detailed help from the National Football League in dealing with concerns which may very well be unique to the National Football League in writing this legislation. I certainly appreciate that major league baseball, having an antitrust exemption, having the confidence that Mr. Garner expressed, and the continuing validity of that exemption, favors having no legislation at all, but I think you ought to deal with this from the perspective that you may very well have some legislation, and we would seriously solicit, Mr. Garner, your participation and your contribution, without prejudice. That doesn't mean that you still can't oppose the bill, but we don't want to make unintended mistakes; we don't want to interfere where it is unnecessary to do so, even though we are very determined to protect the interests of

communities like this community and others throughout the country with major league sports franchises, which are so vital to their economy and their self-esteem.

Mr. GARNER. Mr. Chairman, I didn't intend to convey the impression that baseball was highly behind its baseball exemption from the antitrust immunity and pulling the curtain, and that was the end of the game. You can be assured, as Dr. Brown said earlier, and I would just reiterate, that baseball will cooperate in every respect with what you are saying.

Senator GORTON. Thank you.

Senator BOSCHWITZ. If I may continue, I, too, once again, solicit your input into the language of this bill so we can have the very best possible legislation. And the Chairman noted that the National Football League has participated, and I would like to read a statement, Mr. Chairman, at the conclusion of these witnesses' testimony from the Minnesota Vikings.

But let me ask you, if I may, the same question that I asked the Mayor and the council members, and that is: Are we unbalancing in this legislation the relationship between communities and owners of baseball teams, or are we in any way jeopardizing values of franchises? Are we currently only tagging financial value and not the other, perhaps, more esoteric aspects of the franchise, but are we unbalancing the relationship between a community and a franchisee and are we doing harm to that relationship with this bill?

Dr. BROWN. I would wish you would elaborate just a little bit more about the unbalancing. I am not quite sure I understand what you are saying.

Senator BOSCHWITZ. The objective of this bill is to prevent franchises from moving and being the subject of a bidding war. The objective of this bill is not to undermine value. The objective of this bill is to create stability. Are we achieving those ends or are we in some way imposing ourselves on the relationship between a city or a State and the franchisee?

Dr. BROWN. Certainly any type of deterrent to a franchise move would obviously enhance the stability of the franchise location process. At the same time, I would envision that as far as the franchise per se is concerned, that as you decrease their flexibility to move, you certainly decrease the value of the franchise.

Senator BOSCHWITZ. Let me ask: You mentioned earlier in your testimony that eight or nine of the teams are in the same location that they were; have the values of those franchises deteriorated because of their failure to move?

Dr. BROWN. They haven't deteriorated because of their failure to move. The fact that they have stayed in one area speaks for the stability, but the fact that a franchise in an industry is able to move, that does enhance the value of all franchises, I would assume.

Senator BOSCHWITZ. Have franchises not been transferred within these communities at high prices?

Dr. BROWN. I am not sure I—

Senator BOSCHWITZ. Have the Baltimore franchise or some of the others who have not been purchased remained in the communities at a very high price?

Dr. BROWN. Sure.

Senator BOSCHWITZ. Well, I thank you for coming. I note that you said that the only city that lost a franchise, apparently, was Washington, DC. I was thinking, as you stated that, that the citizens of that area have the Congress for entertainment, and as a result, may not have been seriously deprived but * * *

Dr. BROWN. Have they said that the Congress doesn't always play ball?

Senator BOSCHWITZ. But I thank you very much for coming.

Senator GORTON. I do, as well.

Dr. BROWN. Thank you very much.

Mr. GARNER. Thank you very much, sir.

Senator GORTON. We will now call our next panel: Mr. Mackay, Mr. Dewing and Mr. Bell. And while you are coming up, Senator Boschwitz has a letter from the management of Minnesota Vikings which he would like to read into the record.

Senator BOSCHWITZ. I have not read this letter yet, Mr. Chairman, but I understand from the staff that this is an appropriate place to read it.

This is a statement by Michael Lynn, who is the executive vice president and general manager of the Minnesota Vikings.

I might say, Mr. Chairman, that the Minnesota Vikings have been most cooperative in the effort to keep the Minnesota Twins here, and indeed have been cooperative, not only in word, but financially. They have participated very handsomely financially to buy tickets to keep the Twins here.

[The statement follows:]

STATEMENT OF MICHAEL LYNN, EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER,
MINNESOTA VIKINGS

To understand the Minnesota Vikings' position on the relocation of sports franchises, you only have to review the Minneapolis and St. Paul newspapers of last Thursday.

It was on that day that this National Football League club joined with a number of other major Twin Cities' corporations and donated \$500,000 to a fund that will be used to purchase tickets from the Minnesota Twins and help ensure that the American League baseball team remains in Minnesota.

We do not believe that teams should be allowed to sell to the highest bidder, and have the franchise move to another location; we do not believe that a team should be allowed to move to another city just because they can get a better financial guarantee or a more beneficial stadium lease. We believe a team should not be able to abandon its home territory and walk away from loyal fans while ignoring public investments in stadiums unless they can make an excellent case for doing so, and their fellow league members approve such a transfer.

What can prevent damaging, unauthorized franchise locations is legislation—proper legislation.

When the Minnesota Vikings moved into the new Hubert H. Humphrey Metrodome in 1982, it was with a 30-year lease and a commitment from the National Football League that an NFL franchise would be guaranteed in Minnesota for 30 years.

We believe in the economic and civic importance of sports franchises. We believe, because of that importance, that the interests of the fans and the community should be protected. The National Football League has tried to offer that protection, and the result was a \$50 million antitrust suit in the Raider case.

Commissioner Pete Rozelle recently spoke to this Committee about the unique nature of professional sports leagues as business enterprises. I will not repeat his words; rather, I just wanted to remind you to reflect on what he said, because it is essential to this discussion.

His remarks were important because when the Vikings joined 26 other NFL teams in trying to prevent the move of the Raiders from Oakland to Los Angeles, those 27 clubs and the National Football League were charged with an antitrust vio-

lation . . . charged with an antitrust violation because of an attempt to prevent a profitable and financially sound NFL member club from abandoning its community. The question, of course, is whether that preventative act should be illegal under Federal law.

Obviously, we don't think so. We think there should be legislation that provides a comprehensive solution to the problem of team "free agency". We think there should be legislation that provides a legal framework that address not only future moves, but the relocation of the Colts and Raider teams.

We think legislation should recognize that the National Football League, and other leagues, are common business enterprises that jointly produce entertainment that competes against other entertainment and that all members of a league have joint interest in the location of teams in the league.

Because of the structure of the NFL, all members joined in producing the product, and all teams share in the economic risks and rewards. An example of the rewards would be the equal sharing of the revenues from the network television contract. If there were not equal sharing, there would be a definite imbalance: Do you think that Green Bay could generate the same TV revenue as, say, New York?

Commissioner Rozelle, in his remarks, explained the National Football League's position on S. 2505 and S. 1036. Rather than repeat that for you now, just let me say that the Minnesota Vikings support the NFL's position on the bills, just as we supported the league in its policy on franchise relocation. Franchise stability is the cornerstone of any league, and without it we have the current sad state of affairs where the NFL is sued for attempting to stop franchise relocations (Los Angeles) and sued for not preventing relocation (Colts). Again, what is needed is proper legislation.

I apologize for not being able to address you personally, especially on as important a subject as this one, but a prior commitment made it impossible for me to join you.

Senator BOSCHWITZ. You'll note, Mr. Chairman, one out of four Minnesotans are participating in the fishing opener. I don't know where Mr. Lynn is, but I wanted to express thanks to Merlin Dewing, who I understand has canceled the trip with his son Jeff to be here today.

Senator GORTON. Thank you, Senator.

Senator BOSCHWITZ. I think, Mr. Chairman, that the NBA is represented here today, too, and has a statement.

Senator GORTON. If it does, it will, of course, be included.

Senator BOSCHWITZ. I think the statement will not be ready for a couple of days, so I would ask unanimous consent that the record be kept open to receive additional statements for a period of 10 days.

Senator GORTON. Without objection. So ordered.

Gentlemen, we are delighted to have each of you here and we will permit you to testify in whatever order you deem most logical and we will save the questions for each of you following your statements.

STATEMENT OF MERLIN DEWING, CHAIRMAN, MAJOR LEAGUE BASEBALL TASK FORCE, ACCOMPANIED BY HARVEY MACKAY, MEMBER

Mr. DEWING. Thank you.

Mr. Chairman, Senator, on behalf of the Minnesota Major League Baseball Task Force, we certainly wish to thank you for your invitation to speak before such a distinguished hearing.

Briefly, I will give you an historical big picture which led to the establishment of the task force recently, and then perhaps Mr. Mackay, who has so much history, going way back, will fill you in to that respect, and Jerry, of course, will follow with his perspective from the stadium commission's view.

In October of 1983 the leaders of the business community, under the auspices of the Greater Minneapolis Chamber of Commerce, became very concerned about the need to sell 2.4 million tickets to fulfill the requirements of the Twins lease. At that same time, a \$24 million offer was on the table from Tampa for the purchase of the ball club. And so the Chamber, in its leadership, formed a Minnesota Major League Task Force. In fact, the three people in front of you are members of the task force as, of course, the Mayor and a number of others. As Chairman of the Greater Minneapolis Chamber of Commerce, last year I was asked to take on the responsibility of chairing this task force. In October the task force came forward with two objectives: One, sell 2.4 million tickets. Two, make certain that the \$24 million would be available to buy the team if it were put up for sale, although at that time it was not for sale.

By December a consultant had been engaged to first determine if there was a consensus among the business community to do either, the answer was: No. Indeed, he was told by many of the companies, which are now contributing hundreds of thousands of dollars for the ticket buyout, that they would support some form of involvement, but that this involvement should be long term, with a modified marketing strategy in place.

A lot of people were willing to get involved, expressed great support for baseball, but were, in fact, perhaps disagreeing about the intensity of the involvement at that point.

A tour of seven major league communities facilitated by the good offices of the President of the American League produced some revealing facts. In addressing the question of what is the most appropriate relationship between a community and a baseball franchise, a number of distinctly different and successful options were suggested. It was very easy to see that the successful formula created by the baseball franchise and the constituency working together in cities such as Kansas City, Milwaukee, Los Angeles, Chicago, et cetera, did not exist in the Twin Cities. There is a lesson here, and I will elaborate shortly.

All of the counsel received from the executives and owners of the baseball clubs across the country, plus that received from the outgoing and incoming Presidents of the American League, pointed out that a marketing plan should be drawn up which would show the baseball franchise in Minnesota what other teams were going to increase their attendance and to strengthen their relationship with the communities. No constituency in this community was left untouched in that study. Attention was focused not only on what the ball club had to do, but what was expected from the community, and what might be anticipated from the media. All the conclusions received from the baseball clubs and the league in February indicated that the best long-term, practical objective was to develop strategies which would demonstrate to the major league owners that this community supported major league baseball.

Attendance figures between 1.3 and 1.4 million for 1984 and 1.5 and 1.7 million for 1985 were proposed and strategies to reach those numbers were devised and given to the Twins. The 1984 attendance goal was nearly 60 percent higher than 1983's attendance.

You have a list of the task force members, which include, among your panel and also representatives of many of the largest and

most successful corporations in this community, political people, they agreed with the strategy, so did the league. However, three critical events subsequently occurred. Reports of a \$50 million offer from other cities for the ball clubs appeared in the media daily. Baltimore left the city in the middle of the night, and recently a minority interest in the Twins was sold to Tampa. Suddenly this community became alert and was aware of the fact that the franchise as a franchise in this community was in trouble. The business community, the political community and even the media came together to try to figure out what should be done in the short term and how the team could be kept to its lease as a stopgap measure.

While this has been undertaken, a number of eminently important and larger issues remain. And in the consideration of your fine piece of legislation, several questions should be asked: What are the long-term reciprocal responsibilities of a community to a franchise, and a franchise to the community? If a major league baseball is a franchise, and it is, are appropriate overall measures of accountability and responsibility required by the governing body of the major leagues to make certain that the franchise is marketing itself correctly so as to draw attendance? Is a community relations program in place so that the club will be integrated into the community? Is making public remarks tempered to meet the spirit and makeup of that community? Is it doing its best as an entertainment vehicle to bring in the entertainment dollar and to reflect well on that community?

If a major league baseball franchise is indeed a franchise, do you think that by analogy a McDonald's franchise owner would be permitted by its governing body to put out an inferior quality product to offend their customers, to publicly castigate their own employees and, in general, to give the impression that their conduct was thoughtless? If a major league baseball franchise is indeed a franchise, shouldn't there be a greater sense of governing by major league baseball to make certain that the affairs and the conduct of the franchise reflect well and consistently on the franchise and its community?

If your legislation in the broader sense will somehow lead in the direction that allows a community the opportunity to preserve its right to a major league baseball franchise and to make both the owners and the individual communities aware of the very important responsibility each has in carrying out a mutually beneficial relationship, your legislation will have served a purpose even beyond its direct intent. Baseball franchises should not be conducted as charitable organizations, demanding support, but should be an integral part of the character of the community. The community plays a role in the success of the franchise, and the franchise plays a role in the success of the community.

Thank you very much.

Senator GORTON. Thank you very much.

Mr. Mackay.

Mr. MACKAY. Thank you, Senator Gorton and Senator Boschwitz.

My name is Harvey Mackay. I have been a Twin City resident, I have lived here all of my life. I am a past President of the Minneapolis Chamber of Commerce. I was the Chairman 5 years of the Stadium task force which was created by the Greater Minneapolis

Chamber of Commerce. The task force which was created approximately in 1976 was made up of the following groups: labor, minorities, the arts, and business. The main objective of that task force was how to retain major league sports in this area. Two years we studied the problem. All of the interested parties appeared before us, city officials, State officials, Twins officials, also I went to New York and had a 3-hour meeting with Bowie Kuhn at that particular point of time. Over and over and over, the Twins' officials threatened to leave this community if a new domed stadium was not built. The main conclusion after that 2-year study and report, which, I might add, was joined, a joint statement by St. Paul Task Force, stadium task force, which was formed subsequently, about 6 months after we formed, 44 members out of 44 members said the following, and that is, the conclusion was: The Twins would leave if a new stadium were not built. Four more years of time, money, and energy was spent by the private and the public sector. Many unpaid workers, which I am only one, have spent countless, countless hundreds and thousands of hours drafting proposals, lobbying legislators, drumming up public sentiment, to get support for their proposals, even sleeping in the hallways at the State Capitol.

A major league baseball franchise is a civic asset that can not be measured in dollars and cents alone. It is like our parks and our lakes: one of the positive ways we define a place where we live.

Meaning of our lives: We are major league, we say; it means something, something special.

I'd be happy to answer questions.

Senator GORTON. Thank you.

Mr. Bell.

**STATEMENT OF JERRY BELL, EXECUTIVE DIRECTOR,
METROPOLITAN SPORTS FACILITIES COMMISSION**

Mr. BELL. Thank you, Mr. Chairman.

I am pleased that you are here today, and I thank you very much for inviting me.

I will make a brief statement. This hearing comes at a sensitive time in relationship between the Metropolitan Sports Facilities Commission and our baseball team, the Minnesota Twins. After months of speculation about possibility of the Twins leaving Minnesota, I think we are nearing a solution that will keep the Twins here, at least for the next few years.

I should point out that our situation is perhaps unique in the country. We entered into a 30-year agreement with the Twins before the stadium was built, but we agreed to an escape clause for the Twins if ticket sales remained below the average in the league. That is exactly what has happened. So the possibility of the Twins moving has become a reality under our agreement. We, the Commission and the community, are now taking steps to increase ticket sales to the level that will prevent the escape clause from taking effect.

While we have provided a mechanism for the Twins to terminate the lease with the commission, there is a vast difference between terminating and renegotiating the lease and the Twins moving to another city. The legislation you have proposed will, I believe, help

ensure some rationality in the competition among cities for baseball teams. And even though our situation may be somewhat unique, I think it will help this area to continue to have the opportunity to compete fairly with other areas that might seek to lure a team away from us.

The impact of the Twins leaving after the 1985 season would be a loss of revenue to the commission of \$1,678,000 in 1986, and \$1,760,000 in 1987, and similar amounts in the years 1988 and beyond. The loss of the Twins would have a severe impact on the financial condition of the stadium. Every publicly owned and financed major league stadium in the country is susceptible to losing its major league tenant to another city that is willing to offer a more lucrative agreement. I believe that the community about to lose a team should be given an opportunity to take reasonable measures to keep its major league teams.

Thank you. And I would be happy to answer any questions that you may have.

Senator GORTON. Before we ask questions, I should like to compliment all three of you. I don't think I have heard a higher quality or more relevant testimony on any bill with respect to which I have listened to witnesses in some time.

I particularly would like to react to what Mr. Mackay said. If there is a central reason for my interest in this bill, it is exactly the importance of franchises like this to the sense of the community, to the sense of its own self-worth, which seems to me to be absolutely vital. And I don't believe that the gains made by those cities which get franchises transferred from somewhere else match the losses to a city which has had one and has lost it, particularly when it has been substantially supported, and when that loss really does not relate to the people of the community at all. I believe there are many cities in the United States which don't have major league sports franchises which no doubt can support the Twins, and, of course, there has at least been gradual expansion, as such, in some communities, I don't believe it is appropriate to deprive cities which have a long history of support of those franchises.

I would like to thank you for the testimony of each of you.

I do want to start, however, with Mr. Bell, who at least half answered the question of the Mayor, and one which came up initially, that is how you got yourselves involved with this 1,400,000 attendance trap as recently as 3 years ago, but I still would like to go on and inquire with some puzzlement as to how you were forced to or agreed to such a set of conditions, when, evidently, the building of this stadium was so much more important to Twins than it was to the Vikings. Didn't you see at the time that given the nature of the team that Mr. Griffith was putting on the field year after year after year that you might have a lot of trouble with that provision?

Mr. BELL. Mr. Chairman, I would be glad to try to answer that question. I will go back and give you a little bit of history. When the legislation, allowing creating the sports commission for which I worked, was passed, it included in it some 14 conditions, preconditions that had to be met before bonds could be sold to build the stadium, \$55 million of revenue bonds. One of those conditions was that we have a 30-year lease with the major league baseball fran-

chise and a major league football franchise. We were negotiating those leases, along with trying to meet the 13 other conditions, and were making progress, having success with the Vikings and the Twins, except that the Twins said they would never sign a 30-year lease, binding lease, without an escape clause, never. We took that fact, we basically met all the other requirements that——

Senator GORTON. Is there such a requirement in the football league?

Mr. BELL. No, there isn't.

Senator GORTON. Go ahead.

Mr. BELL. We took that report to the legislature and said: It is impossible, and we convinced ourselves it was impossible to sign a lease with the baseball franchise without an escape clause. The legislature amended the law, permitting an escape clause to be included in the 30-year lease with the Twins.

We took the position that we were created to carry out the intent of the legislation; didn't ask the legislature to provide that escape clause, but we simply reported we, in our best belief, can't do it without that.

Senator GORTON. So, bluntly, you were faced with this situation, and some of the others can answer, you were told, in the first place, the team is going to move if it doesn't have a domed stadium, and you were told, in the second place, exactly what kind of a lease it was going to be if you built the domed stadium?

Mr. MACKAY. That is not really factual, with one exception, exactly; for the 5 years that we met and spent hundreds and hundreds of thousands of dollars, and thousands of meetings, at no time was it ever said publicly or privately that they would not sign a long-term lease. The only reason for the task force was to secure long-term leases with the Twins and the Vikings; that was the reason.

Senator GORTON. So that the escape clause came later?

Mr. MACKAY. Five years later, that is when it came, and that is when the commission was put into effect.

Senator GORTON. Mr. Mackay, if I can follow up with you on that, and then go back to Mr. Bell.

Did the fact that you had an owner who had already left one city ever cause you to have any reservations about these undertakings during this 5-year period?

Mr. MACKAY. No, I don't think that entered our minds, because I think you can paper the walls over there with banner headlines over and over and over again from the Twins' officials that what was needed in order to really help that franchise was a domed stadium.

You must remember that we play 81 home baseball games; almost half of those games are played in April, May and September. If you are a tennis player, you don't get very many sets in those months; if you are a golfer, you don't get many rounds in those months. A 20-year study showed that half of the dates, and these are the Twins' figures, not ours, Twins' officials, OK, half of the dates in 20 years were not favorable dates for playing the game.

Mr. MACKAY. During the season, over half of the 81 baseball games over a period of 20 years were not favorable playing dates,

as far as the weather map is concerned. So, those were some of the reasons why.

Senator GORTON. Mr. Bell, I am sorry; we interrupted you.

Mr. BELL. I didn't get to complete, in answering the question I think you asked, also, about the 1.4.

At the time we signed the lease with the Twins, that was the average attendance in the American League. It is now 1,700,000 fans, but the lease says the lesser of the league average or 1.4, so the 1.4 is our operative number.

We were also told that building a new domed stadium would contribute to the viability of the Minnesota Twins * * * very near the top and always drew over a million fans a year, which was sort of a benchmark in the 1960s. And were working their way up toward, indeed, 1967; they had 1,400,000 fans. Shortly after that came the free agency; a lot of baseball teams were sold, sold to new owners that had more money to compete than the Twins did, and they fell on some hard times; that is when the human cry started: We need a new stadium in order to be competitive with fellow teams.

We were told that a stadium was not the significant cost of operating a baseball team, and I still believe that's true; players are the significant cost. In order for the Twins to generate more revenues, they told us they needed a domed stadium so they didn't have rain-outs, so people could plan to come to the games, so the uniqueness of the new stadium would provide additional attendance, at least in the first couple of years, regardless of how the team performed on the field. And that through that new rejuvenation, they would become more competitive. That has not been the case until this season when they are getting a little more competitive. But that was the backdrop and the context in which we agreed to the 1,400,000.

Senator GORTON. Again, a question that I think was referred to you by the earlier panel: Are major league sports treated any differently from the point of view of taxes in Minneapolis than are other competing amusements, theaters and the like?

Mr. BELL. Mr. Chairman, I can answer the question with regard to leases at the stadium. The Minnesota Vikings and Minnesota Twins are treated differently. They both pay some costs very much the same, except that Twins pay seven and a half percent, whereas the Vikings pay 9½-percent rent. The Twins received 30 percent of the gross sales of concessions, and the Vikings receive 10 percent of the gross sales of concessions. So, those are the differences.

Senator GORTON. What about a rock concert or something like that? What about other uses of that stadium?

Mr. BELL. Now, other uses of that stadium are not treated any better, with the exception of the soccer team, which is just starting here, and that is only for a 3-year period, than are the Twins or the Vikings.

Senator GORTON. Is there a State or local amusement tax, a tax on tickets to sporting events and movie theaters?

Mr. BELL. Mr. Chairman, there is a 10-percent admission tax that is charged for all tickets sold at the Metrodome, irrespective of what they are sold for, what kind of an event it is. There is a 3-percent amusement tax in the city that is not charged at the Metrodome or anything.

Senator GORTON. Senator Boschwitz.

Senator BOSCHWITZ. We have had a lot of conversation about the attendance. I wonder if one of you gentlemen would tell the panel and, for the record, why attendance didn't meet projections?

Mr. DEWING. In the current year, Senator?

Senator BOSCHWITZ. Attendance as the years have gone by. We have just heard attendance was quite high at the outset.

Mr. DEWING. I think Jerry touched on it when he talked about free agency, and, in fact, the Twins were not competitive for a number of years, have not played .500 ball since back in the early 1970's, and I think that influenced it. Also, I think professional sports went through an era that recognized that the performance by the team on the field was not the only factor influencing attendance. That a good marketing and promotion effort and plan influenced attendance significantly. This club did not introduce a marketing plan.

Senator BOSCHWITZ. What does that mean, "a marketing plan"? How does the baseball team develop a marketing plan?

Mr. DEWING. Well, the clubs that we visited, Senator, tailored their marketing effort around their marketplace. I will give you an example. Milwaukee, last year, drew over 2 million fans and over 1 million of them came from outside of the metropolitan area. They did this with the strong winter tour program, dinners in January in Fond du Lac and Wausau, and so on, with managers, players, and so on, identified a Brewer representative in each of those communities who arranged groups to—

Senator BOSCHWITZ. What did you call them?

Mr. DEWING. A Brewers' representative in each of those communities who brought groups together to come in to the ball games. The Twins, in the peak years that Jerry mentioned, drew more than 40 percent of their fans from outside the metropolitan area. In 1983 it was fewer than 10 percent. They have not had a representative or a winter tour in those communities for many, many years. That is one illustration of tailoring your market.

Senator BOSCHWITZ. Mr. Mackay, let me address the question to you, because I know that as the Chairman, or Mr. Dewing, I think, said you have a lot of history in this whole matter; as a matter of fact, I note you a little gray with all that history, but, would you answer what your assessment is with why the attendance has not met projections?

Mr. MACKAY. Can you give me what years, Senator? Are you talking about just since they moved into the dome, or are we talking about prior?

Senator BOSCHWITZ. Perhaps prior, and most particularly since they have now moved into the dome, which is what we have been principally concerned with, but also prior.

Mr. MACKAY. Well, to piggyback on what Merlin just said, part of the marketing plan and the essence of any baseball club or professional franchise in any sport is season tickets, and you have to have a base when you are selling several thousand season tickets versus here in this area, this franchise. Kansas City produces 12,000 season tickets with a smaller market, and you can see, they all of a sudden have a base; so when you talk about marketing plans, you must have a marketing plan for season tickets. This is

not a State of Minnesota market, either; there is Minnesota, North Dakota, South Dakota, Iowa and Wisconsin, parts of those areas is our market. What has happened is that—I think, if you ask maybe 10 different persons that have studied this situation, you might get some different opinions, but, of course, the team has had to make some very unpopular decisions. I would suspect, if you can't compete in the marketplace because of free agency, all of a sudden your potential to compete and win goes down. If you can't sign your players, and you lose your players, once again the probability that you will win goes down. Over a long period of time, I think a \$20,000 or a \$25,000 person in the marketplace might not perform as well as a person with a \$100,000. I would rather have a \$100,000 sales manager in my business, if that is what the marketplace has put on that particular person, versus a \$25,000. I know in your business, Rudy, if all your competitors were making two and three or four times as much as any of your salesmen, I suspect that your sales may decline also.

Senator BOSCHWITZ. Yes; if I have a franchise that nobody else could sell envelopes or kitchen cabinets or some of the good things in life like that, yes, we would be in much better shape.

Mr. MACKAY. So, I might add that in the eyes of the public—and I am quoting “in the eyes of the public”—the assets that were sold the first 48 hours when they moved into the dome, some of the assets were sold, which means, the players, and if you can turn the pages of history back, that was highly, highly, highly unpopular in the eyes of the public and the ticket-buying consumer. The pricing structure, in the eyes of the public, once again, were just dramatically illustrated, that for the won/lost record, over a period of 10 years, which could not compete with the other 25 clubs, and maybe being out of the race at Memorial Day every single year, that the prices charged were not consistent with the other teams, and I am saying that was the human cry which certainly has demonstrated a downtrend in the attendance. Those are some of the factors that have been posed.

Senator BOSCHWITZ. Well, it is not our purpose today to do anything other than illustrate the problem that we are trying to address in the bill, with the circumstances that exist here, and we don't mean to give up, if you will, on this team or any of its management.

Would you expand, please, what you meant by within the 48 hours after the new stadium had been completed?

Mr. MACKAY. Well, I just—you know, my memory is not quite that sharp, but I just recall, in the first 2 days—and, Jerry, maybe you can help me out, and Merlin—that—

Mr. DEWING. Two key ball players were sold for cash.

Mr. MACKAY. That is right, the assets, the players were sold, the specific players, and I say there was a human cry and—

Mr. DEWING. It wasn't 48 hours, but I believe it was in early June.

Mr. MACKAY. I think, in the first few days, yes; I could be wrong.

Mr. DEWING. Yes.

Mr. MACKAY. So, the assets, as I say, the players, were sold, and the pricing structure came out, and it was extremely dissappointing, which I think had a dramatic impact.

Senator BOSCHWITZ. It's interesting, Mr. Dewing, that you made an analogy with McDonald's franchise owner. Having been in the business of franchise, and others in the business similar to my own, I know of the very many rules and regulations, Federal and local statutes, that were involved to switch a franchiser, in my case had to live up to to survive, so that your idea of imposing some rules on these franchises really is not much different than the rules that have been imposed on McDonald's, which is certainly much more subjected to the marketplace than the situation that we are dealing with.

Mr. DEWING. Senator, what I was dealing with there simply was, as Dr. Brown pointed out: Professional sports certainly challenged the integrity of the prospective owner. There are many rules and regulations dealing with switches in franchises, and those are all impressive; you have to commend them for it. But I don't see performance standards once that franchise is granted.

Senator BOSCHWITZ. Mr. Mackay, you said: Over and over and over again the Minnesota Twins threatened to leave in the event they did not have a new playing facility. Tell us with more precision the representations that were made to you during the process of this community building of that stadium and making the other changes necessary.

Mr. MACKAY. If I can maybe back up to the prior question for a moment, too, I think it should be noted that the sale and the movement or just a movement of the franchise continually in the headlines has to be counterproductive. Toronto opens up and then for weeks and months we read that the Twins will move to Toronto; Seattle opens up and for weeks and months we read about the franchise will go to Seattle, and the beat goes on. I think that has really harmed the marketplace here over and over again. That is why we were formed 7 years ago; that is why we wanted 30-year leases, and then we can go back, hopefully, and run the business. So, I would just like to back up and answer that.

Now, specifically to your other question you wanted me to address?

Senator BOSCHWITZ. What representations were made by the Twins? You said that over and—to use your words, “over and over and over again” threats were made to leave the community unless a new facility was built. At the same time, and prior to the lease, and prior to the written engagement, what kind of representations were made by the Twins that led you to believe that you should make these commitments?

Mr. MACKAY. Well, that can all be documented in testimony before our committee and testimony at the State legislature. So, I couldn't quote, Senator, the verbatim remarks, but that is all a matter of record that can be documented by the Twins' officials, appearing before those State agencies and the State legislatures saying: This is what we need to compete.

Senator BOSCHWITZ. Expansive representations, however, were made?

Mr. MACKAY. Over and over again, yes. And that is the reason why, of course, we continued to go forward.

Senator GORTON. If you sell 2,400,000 tickets, this year, to meet your average, do you face their ability to leave one more year from

now if you don't keep the average up, or do you start a new 3-year period in which you have got to meet certain minimum requirements?

Mr. BELL. It gets a little complicated, but I figured it out yesterday or last week. As long as you have 2.4 million in a 3-year period, any one of the 3 years, the likelihood of them not reaching the average is greatly diminished, but it is a 3-consecutive year period. If zero people showed up next year and the year after, of course, they would be able to leave again. I think it was 890,000 attendance next year; then you take the 890,000 next year, 2.4 million this year, and the 858,000 from the year before, and you keep your average.

Senator GORTON. So, it is a rolling 3-year average?

Mr. BELL. Exactly. Exactly. You can do that for 3 more years. And then the one good thing we have in the lease is that they have to give a 1-year notice, and everybody goes to court. And so the fourth year is involved.

Senator BOSCHWITZ. What can we learn from all this? Let's presume for a moment that through Mr. Mackay's efforts the tickets are sold, and you are able to raise the average; the team management and ownership still, through its own actions, perhaps not be out of the running on Memorial Day, but even earlier, and drive down the ticket sales and create the results that it wants, I'm not sure that—I haven't thought of how we can deal with that in legislation; I'm not sure that we can. Do you have any thoughts on that?

Mr. BELL. Mr. Chairman, Senator Boschwitz, it is difficult, because we can't control the team. I think that the way to deal with that is exactly what Mr. Dewing has mentioned here earlier, is plead to the league that they should lease the—if that occurrence existed, and I am not saying it is going to, but if it did, I think that the league then could come into play and police the way in which a franchise should be operated, within reason, or maybe would require them to sell or offer the sale.

Senator BOSCHWITZ. I found it very interesting when you talked about the marketing plan; that really hadn't occurred to me, the impact of a marketing plan, on attendance, and on the things that just—I guess I always thought: Well, you put together a good team, and you make it attractive, and, therefore, you have a good entertainment value and away you go. But it is a good deal more systematic than that.

Mr. DEWING. Senator, as a matter of fact, there are franchises with outstanding performances on the field that do not have a good history of attendance. Pittsburgh is an example. And until recently, Baltimore was an example.

Senator BOSCHWITZ. Let me ask Mr. Mackay. You said there were 12,000 season tickets in Kansas City.

Mr. MACKAY. Correct.

Senator BOSCHWITZ. And I presume that about 80 games are played at home?

Mr. MACKAY. Same amount, 81.

Senator BOSCHWITZ. Eighty-one? So, that means that is the equivalent of 1 million tickets, then. Eighty-one times twelve, or 972,000 tickets?

Mr. MACKAY. Before the first ball is thrown out. They have a fantastic pace; that is correct.

Senator BOSCHWITZ. And the Minnesota Twins have how many season tickets?

Mr. MACKAY. Well, approximately, before last season, before this current season, about 1,331, and the trend was down, so the first thing that you have to do is, when the trend is going down, you have to stop it. I think that is what Merlin Dewing and his task force did. They stopped the trend down. And then, of course, you have to work up, and it does take a long time.

Mr. DEWING. It is, right now, I believe, in the 2,300 area.

Senator BOSCHWITZ. Thirteen—

Mr. DEWING. And last year it was 1,300, about 100 of those canceled, so the base became 1,000 and I believe now it is up to about 2,300. The task force made a very significant effort.

And let me add, with respect to the Kansas City effort, most of those season tickets are sold by the business community through what is called a land search club. And then the task force has that framework in place, and that is something that this franchise should introduce, but most of those season tickets in Kansas City are sold by the business community.

Senator BOSCHWITZ. Are there any statistics, again, the value of this out-of-town effort? I was fascinated by the testimony. Are there many sold to Fond du Lac or Green Bay?

Mr. DEWING. No. No. They sell very few season tickets out of town. They rely on groups, and they rely on a rebate program in Milwaukee whereby if you bring a group of 500 to a ball park, you keep a dollar per ticket, and you can use that in community activities, and so on. There are, I think, right now, in Fond du Lac, WI, four baseball fields that have been constructed through the rebate program. And the Brewers are given credit for having constructed them. It's a very good public relations' call, in addition to their—

Senator BOSCHWITZ. So, that promotional activities are extremely significant. That's a remarkable—the Kansas City metropolitan area, I believe, is a smaller metropolitan area than this one.

Mr. DEWING. Yes.

Mr. MACKAY. They draw over 2 million fans.

Senator BOSCHWITZ. They sold, also, a million season tickets.

Mr. MACKAY. That's correct.

Senator BOSCHWITZ. They have a million season tickets, and we, on the basis of 1,331, about 110,000.

Mr. MACKAY. Well, that's down from about a high of what period, 4,500?

Mr. DEWING. 4,300.

Mr. MACKAY. 4,300 season tickets was their high, but the trend has been downward for many years.

Senator BOSCHWITZ. And it was also interesting that outstate program generated 40 percent of the trend.

Mr. DEWING. That's right. That's right.

Senator BOSCHWITZ. So, you believe that in the event if a proper marketing plan had been adopted by the Twins, that we wouldn't be sitting here today, because the attendance record would be met?

Mr. DEWING. Well, it's a combination of marketing, performance, posturing yourself with the community, public image. All of those things put a good franchise together.

Senator BOSCHWITZ. Is it important that the players live in the community, is that often a factor?

Mr. DEWING. It's helpful; it is very helpful, and it impacts the economic impact of a franchise, because of the large salaries, if the players live in the community, the multiplier of the community. That's a fact. However, using a very conservative multiplier, we estimate that last year the Twins were responsible for \$22 million of economic impact. If, as Jerry said, they were in average attendance for one-sixth or one-seventh, we think there's \$45 million of economic impact.

Senator BOSCHWITZ. My staff assistant, who is also a Minnesotan, said that this is a great deal for the Twins, with you guys doing all that promotional work, that Mr. Mackay is practically [inaudible] * * * himself in these efforts. I have been the subject of his efforts on a number of occasions.

Let me ask the final question, and that is: What is the impact of the sale of, I believe, 42 percent, to a Tampa group, what is the impact on all of that which we are discussing today on attendance?

Are the fans feeling that we are going to have stability on the ability to sell to a local group? What impact has that 42 percent sale had or will it have, in your judgment?

Mr. DEWING. On the impact of ticket sales, I think it's had a dramatic impact. There's a lot of uncertainty in the marketplace right now: Who is going to own the club; will it be sold; I think it's had a significant impact on the marketability of the ticket sales.

Mr. MACKAY. There's an additional impact, there is a difference when the prior owner, Mr. Murphy, who's living in Washington, I think he owned the stock for 34 years, if I'm not incorrect, and, consequently, there's no impact with that 43 percent, because that was not a competing city. Now, the 42 or 43 percent is moved to a competing city, and that creates tremendous uncertainty. No. 2, a willing buyer does not now have the option to step up the depreciation to the 80 percent factor that we know, which, a willing buyer should have that opportunity to acquire that majority of that stock; therefore, that has another impact on the ability to bid a more competitive price.

Fifty-two percent is a thin majority. And there is a difference between bidding for 52 percent of the club versus 80 percent of the club.

Senator BOSCHWITZ. What in the world would somebody want to sit somewhere with 40, 48, or anything less than 51 percent of the club?

Mr. MACKAY. You can't get dealt into a straight flush unless you are in the game. They now are in the game. They are competitors, of course, in a competitive city. And so all kinds of things might be able to happen.

Mr. DEWING. As Harvey points out, they're the only entity that can buy 80 percent of the club and take advantage and get some tax writeoff.

Senator BOSCHWITZ. So, the final question, Mr. Chairman: What, in the opinion of this panel, is the chance that the Twins are going to stay in Minnesota?

Mr. DEWING. I think now they're very good. As a result of the significant community effort, and as a result of what Harvey and Jerry have done, in raising ticket money, I think they're very good.

I think the community should not be looked upon to make this kind of an effort on a continuing basis, believe me.

Mr. BELL. Mr. Chairman, I would like to add to Merlin: I believe they are good for a short period of time. We have not made a long-range solution to this problem; we have only made a short term solution to the problem.

Mr. MACKAY. On the contrary, I mean, I am sorry, consistently, with that you must know the community's attitude, and the community's attitude is following up. If you want to assess the probability of will they move, or won't they move, the community is not willing to step to 1-percent probability they may move; therefore, that is the reason for this effort. A good local bid was rejected; there are no more options; and so, therefore, whether the probability is 80 percent they will stay here, 90 percent, it doesn't matter. As long as there is a 1-percent probability, this community is going to move mountains to keep them.

Senator GORTON. I believe I read something in the Washington Post this week that you or some of you were being sued with respect to trying to sell these 2.4 million tickets. I wonder if you could enlighten me on that.

Mr. MACKAY. Well, I don't know who they are going to sue. We have a citizens group, this is—I am a member of the task force. But this is a citizens group task force that has raised money, so when we walk over to purchase the tickets, I just don't know—

Senator GORTON. Well, what is the threat? What is the nature of the threat?

Mr. MACKAY. I can't—it is beyond my comprehension how anyone could turn down the possibility of having an additional six, eight, 900,000 fans in the stands to experience your product. I am in the envelope manufacturing business; if I get a million people to try my envelopes, I want to tell you, I would have a long-term future. And so here we would be trying to create all kinds of persons that have never seen a baseball game. The average Twins' fan, believe it or not, in the study 10 years ago, has never seen a game. They have never seen a baseball game; the cab drivers and the elderly, the people in the five-State area who have their radios, and they are real Twins' fans. There are two different constituencies; one that comes to the park, and the other fan that never gets talked about. And here there is a possible opportunity to put a plan, a marketing and distribution plan, in place, and it is being turned down, possibly, with even some constraints that we can't even purchase the tickets, but we will see.

Senator GORTON. Thank you very, very much.

Mr. BELL. Thank you, Mr. Chairman.

Mr. DEWING. Thank you, Mr. Chairman.

Senator GORTON. Our last panel is Mr. Pat Murray and Mr. Doug Ferrari. If they'll come forward, we would be delighted to hear from them.

We are delighted to have the two of you here as well. And, Mr. Murray, you can go first.

STATEMENT OF PAT MURRAY, PRESIDENT, GREATER METROPOLITAN AREA HOSPITALITY ASSOCIATION, AND OF DOUG FERRARI, GENERAL MANAGER, HYATT-REGENCY HOTEL, MINNEAPOLIS, MN

Mr. MURRAY. Thank you, Senator and Senator Gorton.

Senator GORTON. Speak up closer to the microphone.

Mr. MURRAY. Thank you. I am Pat Murray, owner of Murray's Restaurants here in downtown Minneapolis. I am also the president of the Greater Metropolitan Area Hospitality Association.

I'd first like to thank you for your concern and for holding this hearing on this bill.

When the Hubert H. Humphrey Metrodome was originally built, a special 3-percent stadium tax was levied on restaurants and hotels here in Minneapolis to help subsidize the cost of construction and operation of this stadium. This 3-percent tax was reduced last year to 2 percent, and we have been promised that this tax would be eliminated shortly.

However, if we lose the participation of our major league baseball team, I am afraid that this tax will not be eliminated, but, rather, increased higher than the present levy.

Our industry and community felt that by building the new Metrodome Stadium it would guarantee our city and State a major league baseball team and a professional football team.

However, we are faced with the dilemma of possibly losing our major league baseball team, and that would have a disastrous impact to our community.

Our major league teams are a big asset in helping to attract tourism and conventions to our city and State, as well as a big factor in helping the overall economic climate of our metropolitan area.

Thank you once again.

Senator GORTON. Thank you.

Mr. Ferrari.

Mr. FERRARI. I represent the hotel structure, the Hyatt-Regency, in downtown—

Senator GORTON. You better get a little closer to that microphone, sir.

Mr. FERRARI. Certainly, sir.

Two areas, mainly, I guess, I want to address today.

One is the city image created by having professional sports in the cities here.

And second is the revenue generated because of those professional sports. I would address that as a general issue, including hockey and football, because those are both in the Twin Cities area here.

The first thing that I guess I'll tie into it when I'm done is that of a positive national image. Sports is a very good public relations medium, obviously. By having three major teams here, when we go out into the business world and try to bring people to this community to tell them that Minneapolis is a thriving metropolis, please

come to our city, one of the things they look for is: What does the city offer?

Sports is one of those things. Many times when we go out, not only do they ask about the type of sport, but also the availability. For example, for the Twins, we would like to see a schedule 2 years out. But, I don't know, that is not practical, but when we plan our meetings, they are asking questions that far out about: We would like to send our people to a game one night. We would like to send them to a football game, et cetera. So, that is something that we specifically look at.

It was alluded to, the part that conventions have it as well as the liquor taxes and the other taxes in the city. At one point we had the highest room tax in the Nation in the city here. That was to support the dome.

Since then it has been reduced to a degree, but still I think we tie some of the other cities for having the highest liquor and room taxes in the Nation.

As a result, if, for example, we lose a team like the Twins or a hockey team or any of those, we then lose our competitiveness. If we can keep the product or services for the industry, we are in as attractive as possible, we can charge that additional cost to those companies. So, that is the first thing we look at.

A second area I wanted to address was with respect to the direct revenue here. This is money that would not have been spent in the State, but is directed back into the State.

Baseball teams bring in over 3,000 room-nights a year. In our establishment we have all of the teams stay on a year-to-year basis, and I have a pretty good line on that, and that produces over \$300,000 in straight revenue, bringing in another \$42,000 in related taxes to the city, based on baseball; so that would be something the Twins would affect us on.

Football brings in approximately 400 room-nights because of the limited number of games they play and another \$6,000 in taxes. News media coverage probably brings in about \$50,000 more, Monday night football, game of the week, that type of thing, with an additional \$7,000 in taxes to the State and the city.

Hockey provides over \$100,000, with \$14,000 in taxes and revenue. Our composite is: Almost a half a million dollars of additional money is brought into the State which would not have been otherwise spent here by professional teams being in the area.

An additional \$78,000 is brought in, in terms of taxes, to the local base and State base here. Overall, almost \$600,000 additional is spent in the State of Minnesota.

So, it is a viable entity in the State and a valuable asset and a product of the State.

A larger part of the revenue brought to the State comes in terms of spectator-related business. Baseball brings in over 3,000 room-nights a year, or 300 rooms per game. Still, this only amounts to about \$300,000 in revenues. A percentage of that is because of the local interest versus bringing people from some of the outer areas and the volume of games involved.

Again, \$42,000 in taxes. Football brings in 12,000 room-nights a year and over \$1.2 million in revenue. It generates about \$168,000 in taxes in the city and State here.

Hockey, approximately 5,000 room-nights or over \$500,000 in revenues and \$70,000 in taxes. Therefore, spectator sports provide about \$2.3 million in the downtown area here. And this is a very conservative figure. I am not including inflation or payoffs or anything else that might increase this figure.

The end result is that the teams bring in over \$3 million in revenue to the State of Minnesota in a given year, so obviously it is something we would like to see continued.

If I can go back first; and \$2 million of that is put back into the accumulating goods and service, whether that be the purchase of food or beverage or paying employees for their service. Things that spin off of that which have been alluded to are things like parking ramps being full; smaller bars and restaurants, bus companies servicing the downtown area, and tailgate parties, if possible.

So, those are some of the things that you have to look at.

I guess, going back just for a second, when I look at the composites, about \$600,000 is brought in, out-of-State money, into the State here, directly, that would not have been spent here; \$2.3 million spent on spectator sports; a large percentage of that is in-State money; OK?

I would like, if possible, through the marketing of the organizations, et cetera, if your team wins, you get more national sports coverage, et cetera, those are the things that will help us, because we are looking at conventions, the sporting events, bringing in a significant amount of money, but not nearly as much as the amount brought in by the large and basic conventions that come here to pay taxes at 11 and 12 percent range, as well as help us to survive in the city; so I support everything you can do and—

Senator GORTON. Thank you, Doug.

I would like to ask a question: I take it that these liquor taxes and hotel and restaurant taxes that you spoke to are a supplemental source of income. That is to say, the more income, the less you will have to pay for this whole operation, the lower those taxes are or that they will go up if the Metrodome income goes down?

Mr. MURRAY. Originally there was going to be—the whole area was going to get involved, and it ended up just with the city of Minneapolis, and it became a 3 percent on hotel rooms and on liquor. And over the past couple of years now the tax did go down 1 percent. We are fearful that if something would—the tax was supposed to be eliminated after a period of time, after getting the bonds paid off, and hopefully then it would be eliminated, and we are fearful that if we do lose the Twins and the stadium does lose the revenues, that the tax will stay on or possibly be increased.

Senator GORTON. Is that a direct legal requirement or is this something that you think is likely to happen?

Mr. MURRAY. The increase would be something that we likely think will happen.

Mr. FERRARI. An example is that it was supposed to be decreased, the dome collapsed, which we all know about, and it stays a little longer. The Twins say we need air conditioning so we can stay here, so it stays a little longer. So it already has shown a track record of continuation, and for whatever reason that may be, it is not impossible to happen.

Senator GORTON. Is it 3 percent now or 2 percent?

Mr. MURRAY. The stadium tax is 2 percent right now.

Senator GORTON. Senator Boschwitz.

Senator BOSCHWITZ. I have no questions of this panel, Mr. Chairman.

I do note, though, for the record, that one of the people in the audience has submitted some material to me and I would like to say again that the record will stay open for 10 days. And in the event the public wishes to include anything in the record, it should be submitted—I suppose it should be best submitted to my office in the Twin Cities, Mr. Chairman, and will be forwarded to the Committee.

Senator GORTON. I would like to thank these last two witnesses for their help here today.

And Senator Boschwitz has graciously referred the submission of materials for the record to his office. Those who wish to send it directly can send it to the Senate Committee on Commerce, Science, and Transportation, Washington, DC, 20510. The record will be open for an additional 10 days. I think it's important for all of those in the audience to know that tentatively, at least, the Senate Committee on Commerce has scheduled a markup, that is to say a business session on that bill, for June 12, 1984, 1 month from today. That, of course, is not certain. But it is the intention of this sponsor, at least, to try to see to it the Senate Commerce Committee takes action on this bill at that time.

With that, I thank you, Senator Boschwitz, for your hospitality. The meeting is adjourned.

[Whereupon the hearing was adjourned at 11:47 a.m.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. DAN QUAYLE, U.S. SENATOR FROM INDIANA

Mr. Chairman, members of the committee, I appreciate having the opportunity to comment on an issue that has been in the news recently relating to the relocation of professional sports teams and the rights of those involved in such decisions and changes.

Sports of all types play an increasingly important and visible role in the life of this nation. Not only do Americans take great pride in individual athletes or teams that reach the highest levels of national and international competition, but they follow the athletic activities of their children from the earliest competitions in grade school through high school, college and beyond. In addition, sports and physical fitness have caught the attention of a much broader cross section of the American public as Americans have come to view these activities as a vital part of a healthful life. Furthermore, sports played at the professional level have an immense and increasing impact on the society. Not only do professional athletes play an important role as entertainers, but they are also examples of high achievement to youth. And, professional sports teams contribute greatly to the commercial activity of a region and they have a powerful effect on community life, serving as a real source of identity and self esteem for the surrounding population.

Indiana, and specifically its center-of-the-state capital city, Indianapolis, have recognized this immense national interest in all varieties of sport. A huge complex of sports arenas and facilities have been planned, developed and built in the city. A major league football or baseball franchise is the only thing really lacking in this metropolitan area of over one million people to make it a truly complete sports center. Over the past several years the Governor's office, Mayor Hudnut of Indianapolis, the Indiana Sports Corporation, and voluntary committees have made extensive efforts to attract a major league baseball franchise and an NFL football team. Not surprisingly, with the 61,000-seat Hossier Dome now complete, their efforts were intensified in recent months. As a result, a contract has been signed with the owner of the Colts football organization transferring the team the Indiana's state capital. All these activities have been carried out in the public domain, consultations have been held with responsible parties, there were no mysteries among those involved, and, most important, rules applicable to professional sports organizations were followed precisely.

This is why the bill before you today, S. 2505, is of such concern. Section 10 would retroactively apply its requirements to actions that took place after January 1, 1984. In other words, this measure would nullify contractual agreements arrived at by consenting parties within the framework of existing law. Since the founding of the Republic, our laws have been constructed to allow, indeed encourage, fair business dealings legitimate entities. The retroactivity of this bill would be very selective indeed. In fact under S. 2505 it would apply to one team only—the Indianapolis Colts.

In my view, and the view of the Indiana sports community, this retroactive clause is not needed and should be deleted from the legislation. The City of Indianapolis and the Colt football team should be allowed to follow through with arrangements made in good faith in April of 1984 as long as they meet the existing codes and rules. Such retroactive application would contravene the normal conduct and regulation of business in this nation and would set and extremely bad precedent for commercial activities of all kinds.

There are many issues that impinge on the management and location of professional sports teams which will be resolved in due time. Meanwhile, owners, professional team members, cities, states, and enthusiastic fans, as well as the business community, must be allowed to move forward with the times. Professional sports should continue to mature and grow in a commercially sound and legally based national environment. But no matter what unfolds for the future, the rules of the game should not be changed midway through, penalizing those who have followed

them in good faith. Thus, I urge you to delete Section 10, the retroactivity section, from the proposed legislation.

BARAFF, KOERNER, OLENDER & HOCHBERG, P. C.,
Washington, D.C., April 26, 1984.

Senator BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen
Senate Office Building, Washington, D.C.

DEAR SENATOR PACKWOOD: I am writing on behalf of my client, the National Basketball Association. In a letter dated April 16, 1984, you enclosed a copy of S. 2505 and invited Commissioner David Stern of the National Basketball Association to appear at your hearings on April 27, 1984.

As I have discussed with your staff, however, this unfortunately is the busiest time of the year for the National Basketball Association. The NBA is in the midst of playoffs, with intense activity both on a league and individual club basis. To that end, when interest in the National Basketball Association is at its peak, Commissioner Stern is travelling to various playoff sites around the country and his travel schedule makes it impossible for him to appear at the April 27 hearing.

As I have indicated to you, however, the National Basketball Association continues to stand ready to cooperate with the Committee in its efforts.

Sincerely,

PHILIP R. HOCHBERG.

STATEMENT ON BEHALF OF THE NATIONAL BASKETBALL ASSOCIATION

The National Basketball Association thanks the Committee for this opportunity to present the views of the NBA concerning the "Professional Sports Team Community Protection Act," S. 2505.

The NBA does not encourage and, in fact, strongly discourages the movement of franchises. The NBA acknowledged the significant monetary and emotional investment made by cities in their sports franchises and fully supports the policy of promoting team stability embodied in the bill. Nevertheless, it is our belief that the decision to permit or deny a proposed relocation properly rests within the sound discretion of the League, and should not be subject to rigid federal regulation as contemplated by S. 2505.

The NBA is engaged in intense economic competition with other major league professional sports and collegiate sports and with other forms of public entertainment for customers, royalties, radio, television and cable revenue and other sources of support. Legislation should recognize the vital interest of all members of the League in selecting geographic locations that will enhance professional basketball's ability to market and promote its product and to compete effectively with other forms of public entertainment.

In determining whether to approve a proposed relocation, the League would consider numerous factors such as the economic ability of the proposed franchise owner, the experience of the proposed franchise owner in operating a sports team, the number and popularity of professional and collegiate sports teams in the proposed location, the demographic and economic characteristics of the proposed location, the suitability of the proposed playing site, the desirability of establishing a new franchise in the proposed location rather than transferring an existing franchise to that location, and a variety of other factors affecting the League's ability to present an attractive product in a diverse group of markets throughout the United States.

The NBA's ability to evaluate and analyze proposed transfers on their merits would be severely limited by S. 2505. Indeed, the creation of a federal board or agency to supervise and control franchise transfers would deprive the NBA of the ability to make the kind of responsible judgments about the location of its operations that are routinely made by all business organizations. Professional sports franchises are not "public utilities". Rather, they are business enterprises run by people who have made substantial investments and, too frequently, incur substantial losses. The NBA opposes the passage of any discriminatory legislation that would set sports apart from other businesses and impose on professional sports leagues an elaborate regulatory procedure to which other businesses are not subject.

The NBA does not view the movement of franchises as consistent with a stable and healthy League. It is only in those few instances where a compelling justifica-

tion is offered by the owner that the League would permit a franchise to move. In determining whether to allow a transfer, the NBA strongly believes that it should consider, as part of its overall evaluation, the interests of the home community, and the support and commitment that community has given to its franchise.

However, the ability of professional sports leagues to take account of community interests and otherwise to assess the merits of proposed transfers has been seriously hampered by the decision of the Ninth Circuit in the Oakland Raiders case (*Los Angeles Memorial Coliseum Commission v. National Football League*, No. 82-5572 (9th Cir. Feb. 28, 1984)). This ruling, which held that the National Football League acted unlawfully when it sought to prevent one of its best supported and most financially successful teams from abandoning its home city, should be promptly overruled, either by the Supreme Court or by Congress.

Absent a modification of the antitrust laws to enable sports leagues to exercise responsible business judgment in deciding upon the geographic locations in which their teams will operate, the leagues will continue to face the prospect of protracted and burdensome litigation, and potentially devastating legal penalties, no matter what action they take with respect to proposed franchise relocations. The NBA's own experience graphically illustrates the problem:

(1) In 1976, the then Buffalo Braves advised the city of Buffalo, owner of the arena in which the Braves had played their League games, that a transfer of their franchise to Florida was planned and that approval for the transfer would be sought from the NBA. Before the League had taken any action at all, the city of Buffalo filed a lawsuit in Buffalo seeking an injunction to prevent the League from authorizing any relocation out of Buffalo and \$64 million in damages for alleged violations of the Sherman Act. The lawsuit was discontinued only after the Braves withdrew their 1976 proposal to relocate the franchise.

(2) In 1979, the NBA approved the transfer of the New Orleans franchise to Salt Lake City. The team had enjoyed little success in New Orleans and had incurred substantial losses. Nevertheless, a lawsuit was filed in Louisiana State Court by the State of Louisiana and the state agency operating the New Orleans Superdome seeking to prohibit the move and claiming \$60 million in damages for alleged violations of the Louisiana antitrust laws. The City of New Orleans intervened in the action as a plaintiff. Although the NBA ultimately prevailed, it took more than four years of expensive and time-consuming litigation to defeat the damage claims.

(3) In 1982, the San Diego franchise requested NBA approval for a transfer of its operations to Los Angeles. The NBA Board of Governors voted to table the matter, pending a full investigation of whether the proposed transfer would best serve the interests of the League, including consideration of the impact upon the City and fans of San Diego. The NBA was promptly sued in Los Angeles federal court by the San Diego team, which alleged that the mere consideration of its request by the NBA was a violation of federal antitrust laws and that the NBA's failure to grant immediate, unquestioning approval had caused damages to the team in excess of \$100 million. At the same time, the NBA was sued in California state court by two of the San Diego team's season ticket holders, who claimed that the NBA would be in violation of the antitrust laws if it did approve the transfer. The NBA was also threatened with suit by the City of San Diego and the corporation that owned the San Diego Sports Arena if it approved the relocation. In anticipation of this barrage of litigation from all sides, the NBA itself commenced a declaratory judgment action, seeking guidance from the federal court in San Diego as to what action the League could lawfully take. The firestorm of legal activity ended only when the San Diego franchise abandoned its request to move.

Thus, under existing interpretations of the antitrust laws, professional sports leagues have become powerless to act on questions of franchise relocation without subjecting themselves to clearly unacceptable legal risks.

The ability to make responsible decisions about team locations is fundamental to the operation of league sports. It is the leagues themselves, and not the federal government or a regulatory board, that are best situated to weigh the variety of competing considerations and balance the numerous relevant factors involved in a proposed franchise relocation. What is needed is legislation that will enable professional sports to make these judgments, with due regard for community interests, but without fear of exposure to treble-damage actions under the antitrust laws.

SMATHERS, SYMINGTON & HERLONG,
Washington, DC, April 25, 1984.

HON. ROBERT PACKWOOD,
Chairman, Senate Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR MR. CHAIRMAN: We represent the National Hockey League. By letter of April 16, 1984 you kindly invited John Ziegler, the President of the League, to testify before the Committee on S. 2505, Senator Gorton's Professional Sports Team Community Protection Act.

The hearing is scheduled for this Friday, the 27th, a date which sadly falls in the last stages of the Stanley Cup playoffs, a scheduling dilemma which prevents John's attendance. With your permission, however, the NHL would like to submit a written statement, subsequent to the hearing date, but while the record remains open.

With thanks for your consideration, and

Warm regards,

JAMES W. SYMINGTON.

STATEMENT OF JOHN A. ZIEGLER, JR., PRESIDENT, NATIONAL HOCKEY LEAGUE

Mr. Chairman and members of the Committee, the National Hockey League appreciates the opportunity to present this statement on S. 2505, the Professional Sports Team Community Protection Act. The NHL recognizes the importance of this legislation and is pleased to present its views on this bill and the question of franchise relocations.

The NHL supports the purpose of this bill—to ensure stability in the location of professional sports clubs—but suggests that more government regulation is unnecessary since the public interest of the fans and localities coincides with the NHL's interest. Each wants clubs to remain in their home area, unless financial considerations absolutely necessitate a move. We believe the League's record on movements illustrates this.

This legislation is prompted, we believe, by recent transfers of clubs. But it is not the appropriate response. Establishing a cumbersome, costly (to tax-payers) and time-consuming process of review of proposed transfers by a quasi-governmental agency is not the answer. Rather sports leagues should be given the freedom to refuse to permit a club to move without fear of the harassment of having to defend antitrust suits. Both the NHL and the National Basketball Association have refused to permit moves—exactly what the legislation is aimed at—and are now in Federal court defending themselves for that refusal. The National Football League was apparently so intimidated by fear of further costly antitrust litigation that it meekly acquiesced as the owner of the Baltimore Colts moved his team to Indianapolis. Next year it could be the Washington Redskins. Although the NHL believes it has not violated the antitrust laws, inasmuch as the NHL interest is the same as that of Congress, a clear grant of limited immunity from the antitrust laws to permit professional leagues to say "No" to their would-be carpetbaggers would ensure the stability Congress is seeking without the need for governmental action.

BACKGROUND

The National Hockey League was founded over sixty-five years ago and has grown from six clubs to twenty-one. Fifteen years ago we had four clubs in the U.S.; now there are fourteen. Whenever the League expanded its reach into a new area, it tried to ensure that the new Club had quality local ownership committed to that area.

Recently, the League refused to permit the owner of the St. Louis Blues hockey team to move it out of St. Louis. Instead the League located an owner committed to keeping the team in St. Louis, where the fans had supported the Blues since the franchise started in 1967. That refusal and commitment to franchise stability has resulted in the League's being required to undergo the expense of defending itself in Federal Court in St. Louis against a \$60 million antitrust suit brought by the previous owner of the Blues.

Mr. Chairman, right now professional sports leagues are operating in treacherous waters with regard to territorial stability of their franchises. Some feel the *Raiders* case decision means that owners need not live up to the contracts, regarding location of their clubs that they entered into when joining the league. The Hobson's choice confronting a league today is whether to permit each franchise to hopscotch around the country at the whim of its owner, as the NFL apparently did in the Bal-

timore Colts case, or to deliberate and vote as to the appropriateness of the move, and be prepared to defend itself to court, as we are doing in St. Louis and the NBA is doing in San Diego, in the event the move is not approved. This is not a process conducive to growth and stability.

Mr. Chairman, we believe our Nation's sports fans are fast growing weary of litigation. We believe our fans want sports, not courts. This legislation would only ensure more litigation not less since it ignores the fundamental problem which is that leagues cannot now act to keep franchise in their locations without incurring expensive litigation. This is why we support legislation that would give a league the authority to bar a move while clarifying the application of the Federal antitrust laws to such activities.

THE NHL POSITION ON RELOCATIONS

The National Hockey League's position on moves is the same as the fans, localities and yours: We do not permit a move except in emergency situations. The League rule on moves is simple: "Thou shalt not." Our Constitution provides: "No member shall transfer its club and franchise to a different city." If a club wishes to move, the League Constitution must be amended and this requires a unanimous vote. Every club must be convinced that a move is absolutely necessary. The League feels that strongly about movements and their effect on our relations with our communities and the fans that support NHL clubs.

One of the objectives of the NHL has been stability. When we locate a franchise in an area our prime concern is to find a local owner of stature who is committed to the community. We look for someone with the financial stamina to support a club and we require his giving a commitment to do so. In most cases we have found such people. But even when we did not, we always made every effort to preserve an existing franchise if it experienced financial difficulties. The league has expended literally millions of dollars in assisting ailing franchises with the hope that they would survive and that the fans in that area would not be disappointed and left without a club.

In most cases we have been successful. In four instances, however, circumstances have required that NHL clubs be permitted to move from one city to another. All have occurred since 1976. In each case, we should point out, the moves would not have been subject to the provisions of S. 2505 since each club was less than five years old.

The Oakland Seals moved to Cleveland in 1976. That club was subsequently merged with the Minnesota North Stars. The Kansas City Scouts moved to Denver in the same year and became the Colorado Rockies. In 1982 that club moved to New Jersey. And, in 1980, the Atlanta Flames moved to Calgary, Alberta.

I can assure you that in each instance a great deal of time and money was spent in order to avoid these shifts. Every attempt was made to keep a club in its original location. In each instance, moves were permitted only because the club was losing substantial amounts of money, in some cases so much that there was a fear that personnel salary requirements might not be met. I can also assure you that no club would be permitted to move—and it would take a unanimous vote to authorize relocation—were it being supported by fans in its city and financially viable.

The NHL wants its franchises to be successful in their area. Success breeds enthusiasm, interest and support. Franchise moves leave a bad taste in the area and hurt the entire League.

THE SAN FRANCISCO SEALS DECISION

The NHL was naturally interested in the *Oakland Raiders* decision and not simply because we were involved in a move at the same time. The NHL had faced a similar situation almost ten years before. Our rule on franchise movements was upheld then by the Federal Court in *San Francisco Seals, Ltd. v. National Hockey League*, 379 F. Supp. 966 (Cent. D. Cal. 1974) and was the standard in sports, relied upon by other leagues until the *Oakland Raiders* decision.

In our case, the District Court Judge found that the territorial restraints imposed by the League did not restrain commerce and were not a violation of the antitrust laws. The Judge noted that the organizational scheme of professional hockey, which required unanimous approval for a move and which all members agreed to upon joining and by which all members were bound, did not impose a restraint upon trade or commerce in violation of the Sherman Act.

Before the *Oakland Raiders* decision, the antitrust law as to league decisions regarding the location of franchises seemed clear. The Judge in the *San Francisco*

Seals decision confirmed the right of the NHL to determine that clubs should remain where they are.

But the *Oakland Raiders* decision has created a new confusion and concern not only in sports but also in those communities with professional teams. Only legislation can end this confusion. Unless the U.S. Supreme Court reverses the *Raiders* decision, a league's will to keep a club in its home area will be impacted and possibly eroded by the likelihood of litigation expense. Such intimidation makes it difficult to say no.

THE ST. LOUIS SITUATION

Less than 2 years ago in September 1982, Gil Stein, Executive Vice President and General Counsel of the NHL, testified before the Senate Committee on the Judiciary in support of Senator DeConcini's bill, S. 2784, which has been reintroduced in this Congress as S. 1036. That bill gives each league free control over sports team relocations. At that time Mr. Stein stated:

"The issue of franchise relocation, while dormant now, may someday have to be faced by the NHL again. The League would like to face this task, if necessary, responsibly and with some certainty that we will not be subject to antitrust suits and treble damage awards no matter how we may resolve any future situation. We would like to be able to handle it as a league rather than permitting one person to circumvent the rules he agreed to in joining our enterprise."

Unfortunately, Mr. Chairman, those words were prophetic. Shortly thereafter, Ralston Purina Co., the owner of the St. Louis Blues, sought to sell and transfer the Blues to a group in Canada. The League denied that application and in order to keep the club in St. Louis found a new owner, Mr. Harry Ornest, who purchased the Blues and has kept the club in place. Despite much nay-saying regarding the League decision and the viability of the Blues in St. Louis, the Blues made the playoffs this year and all are optimistic regarding their continued success.

We firmly believe that in refusing to permit the move and in locating new ownership committed to success in St. Louis, the League acted just the way this Committee would want us to act—responsibly. We did this because our interest is the same as yours and the fans—stability. But now we are faced with a \$60 million antitrust suit. Professional sports leagues should be given the freedom to act in a responsible manner without the fear of legal intimidation and harassment. Leagues must be exempted from potential claims by member clubs for failure to approve franchise relocations. Such protection would ensure that moves would be prohibited unless absolutely necessary.

CONCLUSION

Mr. Chairman, the NHL supports the policy of stability underlying S. 2505. A League should have the right to prevent a club from moving, a right that is now in question under some lawyers' interpretation of the antitrust laws. The NHL is committed to franchise stability. S. 2505 unfortunately does not give a league the clear freedom to refuse a move. Without a specific exemption from the antitrust laws, leagues must still act at their peril. With such an exemption, this legislation would be unnecessary.

We believe the purposes of S. 2505 could be accomplished more simply and effectively by relying on the League to act, as it has in the past, responsibly. We believe our record shows our intentions. Clarity is needed in this area, not more regulation. Sports leagues need a shield from the misconstrued application of the antitrust laws, not an arbitration board to review proposed moves. Without it, leagues cannot act responsibly, local communities cannot be protected, and, most importantly, the fans cannot be ensured that their support and good faith will be rewarded.

Thank you very much.

[Mailgram]

Hon. BOB PACKWOOD,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN PACKWOOD: Testimony last Friday concerning S2505, the so-called "Professional Sport Team Community Protection Act", contains some serious and unfounded accusations against Al Davis and the Los Angeles Raiders. Portions of the statements by the Mayor of Oakland and the NFL Commissioner, in particular, were in blatant conflict with the truth.

I believe it is important to set the record straight. Please bear in mind that the Raiders victories in Federal court were based not only on violations of the anti-trust laws but also on bad faith and unfair dealings on the part of the NFL.

My client, Al Davis, was unable to testify last Friday because of preparations for tomorrow's NFL collegiate draft. Under separate cover, I have requested of Chairman Packwood an early opportunity for Mr. Davis to testify before the Commerce Committee, to get the untold story before you.

I am sure that you will want to withhold judgment on S2505 until you have had the opportunity to know all the facts in this case.

Thank you for your consideration.

BILL HECHT,

Washington representative, Los Angeles Raiders.

Municipal Administration and the Sports Franchise Relocation Issue

Arthur T. Johnson, University of Maryland, Baltimore County

Professional sports have long been important to the economic and cultural life of American cities.¹ Municipalities seek professional sports franchises for the economic benefits which they bring to their host communities. In order to attract and retain sports franchises, local governments find it necessary to provide them with substantial publicly-funded benefits (subsidies). It is not an exaggeration to assert that professional sports could not exist as we know them without local subsidies (and federal anti-trust exemptions).²

Recent legal developments (i.e., the Oakland Raiders case, *Los Angeles Memorial Coliseum v. National Football League*) with regard to professional sports franchise relocation threaten to make public investments supporting franchises riskier than ever before. If sports franchise owners win the right to relocate at will, local officials will have to reassess previous policy toward their professional sports teams as well as develop new strategies for retaining them.

The issue of franchise relocation is of importance to the 42 American cities currently hosting a sports team in baseball, basketball, football, or hockey, as well as to the many communities desirous of obtaining one.³ The current arena of debate is Congress. The focus of debate is proposed legislation to deny a sports franchise owner the ability to relocate the franchise whenever he/she pleases. Those with an interest in the issue include team and league officials, municipal officials, sports fans, and the taxpaying public.

The outcome of this issue potentially may have an impact beyond just that of the sports industry. There are obvious parallels between sports franchise relocations and plant closings and relocations. The latter issue is one affecting most American cities and has become a national concern.⁴

For students of urban policy as well as for public managers, the sports franchise relocation issue, there-

fore, is worthy of attention in its own right, as well as for its potential implications for broader concerns. The focus of this analysis is the issue of sports franchise relocation. The article presents background to the relocation issue within professional sports, and evaluates proposals for congressional intervention. It argues against the wisdom of such intervention and concludes with a brief exploration of local self-help strategies.

Background—Franchise Relocations 1950-1982

Contrary to popular belief, the movement of franchises is not something that began in the 1950s. While baseball and ice hockey were extremely stable in the years before 1950, such was not the case in professional basketball and football. Cities won and lost teams as rival leagues in those sports warred. Large and medium-size cities such as Boston, Chicago, Cleveland, Denver, St. Louis, and Toronto were affected, as were smaller communities such as Anderson, Oshkosh, Sheboygan, and Waterloo.

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TABLE 1
Professional Sports Franchise Creation, Movement, and Demise, 1950-1960

Year	Baseball ^a	Basketball ^b	Ice Hockey ^c	Football ^d
1950		(Providence, Oshkosh)		(Buffalo, Chicago, Los Angeles)
1951		(Chicago, St. Louis, Anderson, Denver, Waterloo, Washington, Sheboygan)		(Baltimore)
1952		Tri-Cities → Milwaukee		(Brooklyn-New York) → Dallas
1953	Boston → Milwaukee			(Dallas) → Baltimore
1954	St. Louis → Baltimore	(Indianapolis)		
1955	Philadelphia → Kansas City	(Baltimore)		
1956		Milwaukee → St. Louis		
1957				
1958	Brooklyn → Los Angeles New York → San Francisco	Ft. Wayne → Detroit Rochester → Cincinnati		
1959	Continental League announced, but never established			
1960				Chicago → St. Louis
Total				
Teams/Cities	16/15	8/8	6/6	NFL = 13/13, AFL = 8/8 Total = 21/18

Key: (city) = franchise collapses

→ = franchise relocates

^aIn 1950 major league baseball teams were located in New York (3), Boston (2), Philadelphia (2), St. Louis (2), Chicago (2), Detroit, Cleveland, Cincinnati, Pittsburgh, Washington.

^bThe Basketball Association of America merged with the National Basketball League for the 1949-50 season. National Basketball Association teams were located in New York, Washington, Philadelphia, Boston, Baltimore, Syracuse, Minneapolis, Rochester, Ft. Wayne, Chicago, St. Louis, Tri-Cities (Moline & Rock Island, Illinois and Davenport, Iowa), Indianapolis, Anderson, Indiana, Oshkosh, Wisconsin, Sheboygan, Waterloo, and Denver.

^cIn 1950 National Hockey League teams were located in New York, Boston, Montreal, Toronto, Chicago, and Detroit.

^dThe All-American Football Conference merged with the National Football League for the 1950 season. National Football League teams were located in New York (2), Chicago (2), Cleveland, Philadelphia, Pittsburgh, Washington, Los Angeles, Detroit, Green Bay, San Francisco, Baltimore.

^eAmerican Football League franchises in 1960 were located in Houston, New York, Buffalo, Boston, Los Angeles, Dallas, Oakland, and Denver.

Tables 1-3 identify relocations of franchises since 1950 in four sports, as well as the creation of new franchises either by league expansion or the emergence of rival leagues. The tables also identify the demise of franchises due to league termination, bankruptcy, or league merger. The tables reveal that each sport has experienced at least one period of franchise instability since 1950. Only baseball has demonstrated stability during the last decade. Sixty-eight franchise moves have occurred since 1950, with 37 of those taking place after 1970. If franchise collapses are counted, 60 franchises have been lost to communities since 1970.¹

Since 1981, at least 13 of the 42 American communities hosting sports franchises have been confronted with demands for increased sports subsidies (such as stadium improvements and tax breaks). Almost without exception, removal of the franchise from the host city was an implied, if not explicit, threat underlying negotiations.

Stability of franchises in a particular league may be deceiving. The NFL, for example, recognized only one approved franchise shift (Chicago to St. Louis) in the last two decades. Nineteen of 25 NFL clubs, however, have changed stadiums during that time.² Several teams have moved from one jurisdiction to another (usually from the central city to the suburbs)—the New York Giants have actually relocated in a different state—yet remain within their home territories (see Table 3). These moves, including that of the Rams from Los Angeles to Anaheim, are not considered a relocation by the NFL. Clearly, however, cities do suffer from such moves in the loss of economic benefits and/or by having continued responsibility for the costs of a playing facility with one less tenant or absent its sole tenant.³ In several areas, Boston for example, a virtual war has been fought between central cities and their suburbs over sports franchises.

TABLE 2
Professional Sports Franchise Creation, Movement, and Demise, 1961-1970

Year	Baseball	Basketball	Ice Hockey	Football
1961	Washington → Minneapolis WASHINGTON - AL LOS ANGELES - AL	Minneapolis → Los Angeles ABA created ^a		MINNEAPOLIS Los Angeles → San Diego
1962	NEW YORK - NL HOUSTON - NL	CHICAGO (ABL)		
1963		Philadelphia → San Francisco		Dallas → Kansas City
1964		Chicago → Baltimore Syracuse → Philadelphia		
1965				
1966	Milwaukee → Atlanta Los Angeles → Anaheim			ATLANTA MIAMI NFL-AFL merger ^b
1967		CHICAGO	OAKLAND, ST. LOUIS, PITTSBURGH, LOS ANGELES, PHILADELPHIA, MINNEAPOLIS	NEW ORLEANS
1968	Kansas City → Oakland	SEATTLE, SAN DIEGO ABA created ^c		CINCINNATI
1969	SEATTLE - AL KANSAS CITY - AL SAN DIEGO - NL MONTREAL - NL	St. Louis → Atlanta PHOENIX, MILWAUKEE Anaheim → Los Angeles Teaneck, N.J. → Connecticut, I.L. Minneapolis → Miami Pittsburgh → Minneapolis St. Paul		
1970	Seattle → Milwaukee	Oakland → Washington Houston → Charlotte-Raleigh Greensboro Minneapolis → Pittsburgh	VANCOUVER, BUFFALO	
Total				
Teams/Cities	24/22	NBA = 14/14 ABA = 11/11 Total = 25/24	14/14	26/25

Key: → Franchise relocation
CAPITAL LETTERS = New franchise brought about by league expansion
senior league
newer league
(league) = League folds

^aThe American Basketball League began play in 1961 in Cleveland, Pittsburgh, Chicago, Washington, Kansas City, Los Angeles, San Francisco, and Honolulu.

^bThe AFL-NFL merger was announced and Congress provided it with an antitrust exemption in 1966. The leagues played separate schedules until 1970.

^cThe American Basketball Association began play in 1968 in Anaheim, Dallas, Denver, Houston, Indianapolis, Louisville, Minneapolis, Teaneck, N.J., New Orleans, Pittsburgh, and Oakland.

Franchise relocation can be attributed to financial losses of the team owner and league weakness, as well as to factors related to the short-term profit potential of an alternative location. Before 1957-58, franchise relocation primarily was due to the inability to succeed financially in a specific location, and was perceived as a sign of league weakness. Such a view had to be qualified in

1958 with baseball's abandonment of Brooklyn and New York for the west coast.⁸ Financial distress was no longer a necessary justification for relocation. Civic inducements and factors other than a community's past support became the important variables in a franchise owner's location decision.

Thus, 95 acres of prime real estate valued at \$25

million led the Rams to leave the Los Angeles Coliseum for Anaheim (1980). The potential pay television market of Los Angeles is said to have attracted the Raiders from Oakland (1982) as the size of the Atlanta television market attracted the Braves from Milwaukee (1966). The inducements that municipalities are willing to offer, while most often taking the form of playing facilities built with public funds and tax abatements for those that are not, have included land, broadcasting arrangements, and the assumption of past debts.⁸

The control of the number and location of franchises has given sports entrepreneurs leverage to exact concessions from those cities desirous of attracting a franchise as well as from those desperate to retain an existing franchise. The leagues' conscious control of the number of franchises partly explains the fact that the demand by communities for sports franchises outstrips their supply. The imbalance of supply and demand leads cities to escalate their offers of publicly funded inducements in an attempt to outbid one another for franchises. This increases the public subsidy required to attract and retain a sports franchise, and presumably contributes to the instability of franchise location.

1983

Before a team can abandon one community for another, each sports league requires the approval, by a significant percentage of its member franchises, of a proposal to relocate. At the time of this writing, the Oakland Raiders successfully have challenged in federal court the National Football League's relocation rule as a violation of antitrust laws, and have played the 1982 and 1983 seasons in Los Angeles (rather than Oakland) without NFL formal approval. However, the Raiders continue to face in state court the city of Oakland's efforts to gain possession of the franchise (and its return to Oakland) under authority of California's eminent domain law. The California Supreme Court, in June, 1982, ruled that the city does have the power under the state's eminent domain statutes to acquire the intangible property rights associated with a professional sports franchise, provided a proper showing is made (*City of Oakland vs. Oakland Raiders* (1982) 32 Cal. 3d 60). In July, 1983, however, the Monterey County Superior Court held that the city failed to demonstrate that either the public interest required the Raiders to return to Oakland or that the city was attempting to acquire the team for a "public use." The anti-trust and eminent domain cases are being appealed and eventually may reach the United States Supreme Court.

In an attempt to head off the Raiders' move to Los Angeles, the NFL in 1981 sought legislation that would have defined sports leagues as "de facto single economic entities." This would have given its relocation rule and other league actions certain protection from antitrust challenge. Its efforts failed. In 1982, even as the Raiders were playing in Los Angeles, the league vigorously lobbied for legislation, the Professional Sports Community Protection Act of 1982 (S.2784), that would have resolved the antitrust question in the

league's favor, and would have allowed sports leagues to protect community interests against *ownership* relocation desires (but would permit *league* decisions approving relocation).⁹ It, too, failed to gain passage.

In sum, legal confusion reigns with regard to franchise relocation. Attempts by the NFL and the other professional sports leagues to gain favorable congressional treatment undoubtedly will continue.¹⁰

The significance of these events is great for local officials and their economic development policies. First, local officials in franchise cities would welcome legislation that might protect them from franchise owners' demands and stabilize franchise location. If franchises were obligated to remain in their present locations, the balance of negotiating power obviously would shift to local officials. Similarly, if unlimited league entry was permitted, cities would be in an improved bargaining position. The range of legislative options is reviewed in the next section.

Alternatively, if league relocation rules are struck down by the courts or made more lenient, and if legislative assistance is not forthcoming, local officials will need to develop new strategies for dealing with sport entrepreneurs and lessening their vulnerability to the franchise owners' profit maximizing demands. This may include a reassessment of a city's relationship to its sports franchise. Discussion of this follows the analysis of legislative options.

The Legislative Options

Officials of cities with sports franchises wish to tie sports franchises more permanently to their host communities. League officials wish to preserve the authority of league rules in relocation matters. Thus, the two groups cooperated in 1982 in seeking legislation which would restrict the right of franchise owners to relocate. However, the Professional Sports Community Protection Act (S.2784) which these groups supported in 1982 is only one of several legislative options that might so limit franchise owners.

Table 4 identifies the range of these options. Options I-IV are restrictive in intent and would advance greatly municipal interests *vis à vis* franchise owners. Supporters stress the public investment a community makes in a franchise and the psychological identity with sports teams that is built up in a sports town. They also cite the economic benefits derived from the team's presence in the city. These benefits principally take the form of tax revenues and jobs, and are estimated to be millions of dollars annually.¹¹ They argue that the public interest dictates that a team remain in its host community, or at the very least be allowed to relocate only under certain conditions (usually when fan support is lacking and financial losses continue).

Some venture the argument that sports franchises have evolved to the status of public utilities. These individuals similarly base their argument on the amount of public funds that are used to subsidize the franchise and the impact a team has on community identity and

TABLE 3
Professional Sports Franchise Creation, Movement, and Demise, 1971-1982

Year	Baseball	Basketball	Ice Hockey	Football
1971		BUFFALO, CLEVELAND, PORTLAND New Orleans → Memphis Los Angeles → Salt Lake City Washington → Norfolk		Boston → Foxboro, MA Dallas → Irvine
1972	Washington → Arlington, TX	San Diego → Houston San Francisco → played some games in Oakland	ATLANTA, NASSAU COUNTY, NY WHA created ^a	
1973		Cincinnati → Kansas City Omaha (Pittsburgh, Miami) SAN DIEGO	San Francisco → Vancouver presented Philadelphia → Vancouver Ottawa → Toronto New York → Cherry Hill, NJ Boston → Hartford	Buffalo → Orchard Park, NY
1974		Baltimore → Landover, MD Dallas → San Antonio	KANSAS CITY, WASHINGTON DETROIT → (Baltimore) Cherry Hill → San Diego (Los Angeles)	WFL created ^b
1975		NEW ORLEANS Charlotte-Raleigh → Greensboro → St. Louis	PHOENIX, INDIANAPOLIS, CALGARY DENVER → (Ottawa) (Chicago, St. Paul, Vancouver)	Detroit → Pontiac, MI (WFL)
1976		Memphis → (Baltimore) (San Diego, Salt Lake City)	Oakland → Cleveland Kansas City → Denver Cleveland → (Minneapolis) Toronto → Birmingham CINCINNATI	New York → Rutherford, NJ SEATTLE, TAMPA BAY
1977	SEATTLE, AL TORONTO, NJ	Buffalo → Hollywood, FL presented ARIZONA moves (Louisville, St. Louis, Norfolk)	(Cleveland) merger with Minneapolis (Calgary, Phoenix, San Diego)	
1978		Cummauk, I.L. → Rutgers, NJ	Houston → (Winnipeg) (Indianapolis)	
1979		Buffalo → San Diego	WHA-NHL merger (Birmingham, Cincinnati)	
1980		New Orleans → Salt Lake City DALLAS	Atlanta → Calgary	Los Angeles → Anaheim
1981				
1982		San Diego → Los Angeles presented	Denver → Rutherford, NJ	Birmingham → Minneapolis Oakland → Los Angeles USFL created ^c
Total				NFL = 28/27 USFL = 17/12 Total = 45/39
Teams moved	28/24	25/23	21/21	

Key: → Franchise relocation

CAPITAL LETTERS = new franchise usually brought about by expansion

upper = franchise on lower collapse

senior league

new league

^aThe World Hockey Association began play in 1972 in Houston, Cleveland, Philadelphia, Winnipeg, Boston, Edmonton, New York, Los Angeles, St. Paul, Chicago, Ottawa, and Quebec.

^bThe World Football League began play in 1974 in Honolulu, Birmingham, Chicago, Philadelphia, Memphis, New York, Los Angeles, Houston, Portland, Detroit, Jacksonville, and Orlando. Location, names and ownership of franchises changed often during WFL's brief life.

^cThe United States Football League in 1983 played in Boston, Birmingham, Chicago, Denver, Detroit, Oakland, Washington, Los Angeles, Las Vegas, Philadelphia, Phoenix, and Tampa Bay. It will add expansion franchises in 1984 in Houston, Jacksonville, Memphis, Pittsburgh, San Antonio, and Tulsa.

TABLE 4
Legislative Options to Protect Professional Sports Communities from Franchise Relocation

	Options	
Most Restrictive	I	Absolute ban on relocation.
	II	Before relocation is permitted franchise must be offered for sale to investors who guarantee franchise will not be relocated.
	III	Notice of intent to relocate must be given 2-3 years before relocation is permitted; during this time reasons for relocation will be investigated by a third party who has authority to permit or deny the relocation.
	IV	Relocation permitted only if certain criteria are met: usually continued financial losses, inadequacy of the stadium or other parties fail to comply with the stadium lease agreement (as found in S. 2821).
	V	Relocation permitted only if certain criteria are met: usually continued financial losses, inadequacy of the stadium, or other parties fail to comply with the stadium lease agreement.
	VI	Relocation permitted without restriction unless league rules with regard to relocation are modified so as to be more reasonable; other league rules remain intact (present status quo as a result of the Raiders case).
Least Restrictive	VII	Relocation permitted without restrictions but accompanied with unrestricted league entry.

civic pride (i.e., emotional well-being of a city's residents).

Option V describes the NFL's legislative preference. The league wishes to gain approval of its mode of operation before the Raiders case emerged. It argues that the leagues are the only parties that can protect municipal interests in their dealings with franchise owners. Supporters argue vehemently for the right to regulate their own industry.

Option VI represents the present situation as defined by the federal court deciding the Raiders case. Barring congressional intervention or reversal on appeal this will be the status quo.

Finally, some argue that the relocation problem faced by cities is the result of a limited supply of franchises. The supply, of course, is carefully controlled by the leagues. They argue that barriers to league entry should be virtually eliminated. About the only restriction they admit to is some evidence of financial viability. With unlimited league entry a city could quickly replace a relocating team, and therefore not be subject to having to escalate public subsidies to retain a franchise.

The argument of the present analysis is that congressional intervention to restrict franchise relocation is not good public policy. The argument for rejection of the identified options can be made on several grounds.

First, it is doubtful that the public interest dictates the need for such legislation. While there is no doubt that economic benefits are derived from a team's presence, it is unclear exactly how great these benefits are (especially in discussing basketball, soccer, and hockey franchises), and it is possible that in some cities the public costs attendant to a franchise's presence outweigh its benefits. The point is that no comprehensive cost-benefit analysis has been done in any city.¹³

More importantly, professional sports is not a unique industry in terms of receiving public subsidy. Specific public benefits commonly are targeted to individual

businesses. Cities anxious about their economic futures, are in a vulnerable situation *vis à vis* entrepreneurs of all types. The leverage exerted on, and benefits received from, city government by sports entrepreneurs are not unusual.

These non-sports businesses are free to locate new operations where they please as well as to shut down operations in one locale in favor of another whenever it is deemed appropriate. Sports franchises will not be unique in that respect either.

Congress already has decided not to intervene in non-sports industries to resolve the plant shut down and relocation issue. Neither the 95th (H. R. 76) nor the 96th (S. 1609) Congress chose to adopt the National Employment Priorities Act, which was designed to respond to the economic and social impacts of plant closings and relocations. Thus, it would appear necessary for local officials to demonstrate conclusively how sports operations are different from other business ventures. If Congress were convinced to act, it then also would have to explain why other industries should not be treated similarly in achieving community protection.

Those who argue that franchises are analogous to public utilities have yet to demonstrate the necessity of sport to a community. Lowell and Weistart assert that general principles of law would reject the sport as public utility argument:

It would be difficult to argue that a local sports franchise has the characteristics of a public utility as that term has been historically applied. While the services it offers may be of economic importance, that fact alone has not traditionally provided a reason for judicial control. Any firm with a large payroll or significant sales may be important to the local economy. The element missing from a sports operation, and from most other significant local enterprises, is the presence of an activity affecting the basic public need for food, shelter, and sanitation. Even if the concept of "public welfare" were expanded to include emotional well-being, it would require a quantum leap to find that privately-run forms of entertainment were of vital importance. In

short, there is little law to support the application of public utility concepts to sports enterprises.¹⁷

Further, the public utility argument misses the point that the public investment is in the playing facility (stadium or arena) and not the team as such. The facility remains after the team's departure and, theoretically, can prove profitable without the team. Since not all franchises do make use of public facilities (especially in basketball and hockey), inconsistent treatment of franchises might emerge. That is, the public utility argument would not be valid for those franchises operating in privately financed facilities. Acceptance of the public utility argument also would make vulnerable to government action, by analogy, other users of public facilities.

A further objection to the restrictive options is that Congress is responsible for the "public interest" in a broader sense than that of 42 cities. The restrictive options in essence propose to freeze the status quo with regard to the distribution of professional sports franchises to the disadvantage of those cities without sports franchises but desirous of obtaining one. This appears to be contrary to past congressional concerns with making professional sports available to as broad a geographical area as possible.¹⁸

Perhaps the most damning argument against the restrictive options is that they appear to abridge the franchise owners' property rights as well as right of mobility. It is not the intent of this analysis to pursue in detail the constitutional arguments that would likely be raised in the aftermath of such legislation. Let it suffice to note that litigation challenging such legislation would be certain.

Ironically, the NFL criticized S 2821, which reflected option IV, on such grounds. Commissioner Rozelle testified before the Senate Judiciary Committee that defining objective criteria for the purpose of qualifying a relocation was a misleading, simplistic solution. He asserted that owners could too easily doctor their books to show continuing financial losses. He also predicted prolonged legal challenges over interpretations of the criteria.¹⁹

Instead, the NFL lobbied mightily for S 2874 which reflects option V. Tables 1-3 which describe the history of franchise relocations since 1950 suggest that no sports league has adequately protected its host communities. League rejection of proposed moves has been rare, occurring primarily when the owner proposing to relocate is a maverick (i.e., Charles O. Finley, Bill Veeck, or Al Davis). Testimony by league representatives before the Senate Judiciary Committee appeared somewhat incomplete in that they did not reveal the criteria which their leagues used in reviewing relocation proposals. They merely asserted that they best could protect community interests.²⁰

If teams are allowed to move at will, as option VI envisions and as the federal courts have mandated, Commissioner Rozelle has predicted:

If we have a state of law that a club can go wherever it wants to if its lease [for a stadium] is up . . . you are going to have an auction of a franchise. I assure you you will have auctioning of franchises.²¹

This doomsday prediction has been challenged with regard to the National Football League in congressional testimony by Los Angeles Memorial Coliseum Commission representative Bill Robertson, who argued that most NFL franchises are locked into long-term leases. According to him, the only stadium lease pending negotiation in the NFL at this time is that of the Baltimore Colts. The next lease to expire is that of the Houston Oilers—nine years from 1982; and is followed by those of the Los Angeles Raiders, Miami Dolphins, New Orleans Saints, and Tampa Bay Buccaneers—ten years from 1982. The remaining leases expire between 20 and 40 (Pittsburgh) years from 1982. That testimony appears erroneous, however, since the New York Jets currently are in the midst of lease negotiations, and NFL Commissioner Pete Rozelle testified that seven franchises will have their leases expire within the next six years.²²

Even if Robertson is correct, the franchise relocation problem remains for basketball, hockey, soccer, and franchises in new leagues such as the United States Football League. At best, if Robertson is correct, the problem is transformed into a long-term problem rather than an immediate one. Nevertheless, it still exists.

The final option (VII) seeks to minimize the tribute that franchise owners can demand from a city by affecting the supply side of the equation. Municipal loss of a team would not have the community impact it now does if new teams were allowed to form freely and commence league competition without any delay. The leagues object to this option for several reasons. Clearly, team revenues would be diluted as would playing quality. League stability potentially would be transformed into chaos. League officials predict fan interest would decline as a result of league instability and inferior play, having a further negative impact on team revenue and, perhaps, league survival.

In sum, supporters of restrictive legislation are seeking to transform a moral obligation on the part of some owners into a legal obligation for all. The arguments put forth in favor of these options are either unsubstantiated and exaggerated, or faulty and erroneous.

Political power, though, often determines a bill's success or failure. It has been argued elsewhere that Congress prefers to "remain in the grandstand" (i.e., not intervene) with regard to professional sports, and that while sports entrepreneurs are powerful lobbyists, they cannot dictate to Congress.²³ At best, sports entrepreneurs and players associations can veto legislation, but cannot gain passage of sports legislation if one or the other is in opposition. If that is an accurate assessment of the power relations in professional sports it is unlikely that Congress will act on this issue. In effect, the courts will decide. The likely result is that the current situation will remain, at least in the short run. Teams will be able to move at will, until the leagues modify their relocation rules. Assuming that to be the case, it is imperative that local officials define for purposes of policy and public management their cities' relationship to sports franchises. That relationship must be such, it would appear, to ensure franchise stability at minimal public cost.

Managerial Strategies

Municipal officials recognize that their best protection from franchise relocation is the long-term lease which, serving as a contract, binds a team to a city for a specified number of years. Unless the city is willing to accept a "buy-out," the team cannot move.²²

Sports entrepreneurs, however, increasingly are reluctant to surrender their option to relocate. If the right to relocate is granted regardless of league action they will become even more reluctant. This is so especially if fan support in a city is problematic or the franchise is otherwise financially weak. The future of pay television is uncertain, but many expect it to provide great financial rewards for sports teams. Given this and other economic dynamics, owners will be reluctant to commit their teams on a long-term basis to a city, when other more lucrative locations may develop in the near future. Thus, owners can be expected to resist the long-term lease due to the profit motive.

Contrary to popular belief, the movement of franchises is not something that began in the 1950s . . . cities won and lost teams as rival leagues in sports warred.

This is exemplified by the stalemate between the Baltimore Colts and the governments of the city of Baltimore and the state of Maryland. The Colt owner, Robert Irsay, who operates from Chicago, has made explicit threats over the past four or more years to abandon Baltimore. Jacksonville, Memphis, and Phoenix are at least three of the cities in which he has expressed interest. In response, the city and the state considered building a new stadium more conducive to viewing football and capable of seating larger numbers of fans than Baltimore's Memorial Stadium. Those plans, however, were stalled by siting disputes (one issue was whether the site should be in or out of the city), and have since been put to rest by the national economic climate.

As a result, in 1980 the state of Maryland agreed to issue \$22 million in bonds for stadium improvements in exchange for a 15-year lease. Irsay failed to meet state imposed deadlines (within three years) for signing the lease (while signing Frank Kush, formerly of Arizona State University, as coach and playing exhibition games in Arizona). Realizing neither Irsay, nor the Oriole owner Edward Bennett Williams, is going to make such a long-term commitment, the state and city are now offering \$7.5 million in stadium improvements for baseball and \$7.5 million for football in exchange for a six-year commitment. To date no public response from the Colts has been made, and state legislators are publicly skeptical that Irsay will accept the offer. The Orioles are expected to make the six-year commitment.

Local officials must develop strategies to overcome sports entrepreneurs' resistance to long-term commitments. They must also define for themselves, the public, and the owners, the relationship between the team and

the city. Clearly, from the perspective of the public interest, the team cannot be allowed to dominate that relationship.

The goal of any strategy directed at a team owner is to have him either identify with a city or develop an economic stake in that city to such a degree that the owner is willing to commit (more) resources (his team) to the city. The development of a belief in or identity with a city is a long-term process and will be easier to achieve with some owners than others. John Fetser, for example, is reported to have refused to move the Detroit Tigers to a suburban location because "it would be the end of midtown Detroit."²³ Irsay, on the other hand, appears to want nothing to do with Baltimore, and the media and public react in kind to that image.

The ultimate relationship is exemplified, perhaps, by the experimental one-year leases the Orioles have signed with the city for the past two years. That lease calls for an equal sharing between the city and the team of the team profits instead of receiving rental and concession payments based on gross ticket receipts after taxes. Thus, the city and the team have similar financial stakes.

City officials must be active in lobbying an owner. Appointments to special committees or government advisory roles may be one means of orienting an owner to the city. The owner must become knowledgeable about the city so that he or she comes to believe in it.

Stability of the franchise may be enhanced if the owner develops an economic stake in the city. Facilitating local investment opportunities may benefit the owner as well as the city. Care, however, must be taken to avoid favoritism.

Lease negotiations may play upon the owner's short-term profit concerns. Inducements that maximize short-term profits exchanged for a long-term lease may be salable. A lease that is generous early, but recoups costs during its later years may be attractive. An arrangement whereby the team purchases a publicly owned playing facility with a city leaseback arrangement might satisfy an owner's present tax needs.

Such arrangements represent a strategy that can be pursued immediately. The point is, local officials may offer in exchange for a long-term commitment, immediate profits. The basic principle that must be followed in all negotiations in order to protect the public interest is that a lease should be of long enough duration to substantially compensate for the public funds invested in the team. This is not to call for equivalency between costs and benefits, but only to assert that the city must demand something in return for its subsidies. For example, where tax abatements are granted, every year of abatement could require two years of commitment to the city.

At whatever costs, local officials must resist threats to relocate. They must be prepared to negotiate hard, and in their public statements show a willingness to allow the team to leave if its price for remaining is too high. Their negotiation style must be the same as with any other business seeking public benefits. The message to the franchise must be that it is welcome to stay, but it is not crucial to the city's future.

This stance may be made credible in the owner's eyes, if local officials educate the public as to the issues and prepare the public for the team's possible departure. The owner has a considerable investment in public relations and does not want to have to deal with an alienated public if the team does remain in the city. If the city keeps the public informed and stresses equity in its public statements about the negotiations, it will be more difficult for the owner to continue to escalate demands or apply unreasonable public pressure on local officials. Further, other economic interests will be put on notice that the city cannot be blackmailed into granting public subsidies.

If the public indicates it wants its team to remain regardless of public cost, officials then may act accordingly. They must keep in mind, however, that sports fans do not compose the entirety of public opinion.

Notes

1. See S. A. Riess, "The Baseball Magnets and Urban Politics in the Progressive Era: 1895-1920," *Journal of Sports History* (Spring 1974), pp. 41-62.
2. See Benjamin Okner, "Subsidies of Stadiums and Arenas," pp. 325-347 in Roger Noll (Ed.), *Government and the Sports Business* (Washington, D.C.: The Brookings Institution, 1974).
3. Phoenix, New Orleans, Buffalo, Memphis, Indianapolis, Birmingham, and Jacksonville are only a few of the cities often linked to various pursuits of professional sports franchises. Cities hosting minor league teams also are subject to threats of relocation if subsidies are not forthcoming. There were 100 minor league baseball cities in 1982.
4. See Richard McKenzie, *Restrictions on Business Mobility* (Washington, D.C.: American Enterprise Institute, 1979), and Barry Bluestone and Bennett Harrison, *Capital and Communities: The Causes and Consequences of Private Disinvestment* (Washington, D.C.: The Progressive Alliance, 1980).
5. As this is being written St. Louis faces the possible loss of its hockey team, Cleveland, its basketball team (which actually plays in suburban Richfield), and Indianapolis, its basketball team. In Baltimore, the owner of the NFL football franchise has openly shopped for new locations, and in New York the NFL Jets have announced their intention to move to New Jersey. Oakland is fighting in the courtroom to regain its NFL franchise.
6. *Professional Sports Antitrust Immunity*, Hearings before the Committee on the Judiciary, United States Senate, 97 Cong. 2 sess. (1982), p. 28 (hereinafter referred to as *Professional Sports*).
7. For example, the saga of Buffalo's relationship with professional sports leagues is recounted by Leslie Foschio in *Inquiry into Professional Sports*, Hearings before the House Select Committee on Professional Sports, 94 Cong. 2 sess. (1976) Pt. 1, pp. 507-524. Representatives from the Los Angeles Coliseum estimated an annual loss of \$750,000 from the Coliseum's net revenues due to the Rams departure. See *Professional Sports*, p. 193.
8. Background information relevant to this infamous move west is contained in Cary Henderson, "Los Angeles and the Dodger War, 1957-1962," *Southern California Quarterly* (Fall 1980), pp. 261-289; Thomas Hines, "Housing, Baseball, and Creeping Socialism—The Battle of Chavez Ravine, Los Angeles, 1949-1959," *Journal of Urban History* 8 (February 1982), pp. 123-143; and Lee Lowenfisch, "A Tale of Many Cities," *Journal of the West* (July 1978), pp. 71-82.
9. See especially Mark Rosentraub and Samuel Nunn, "Suburban City Investment in Professional Sports: Estimating the Fiscal Returns of the Dallas Cowboys and Texas Rangers to Investor Communities," *American Behavioral Scientist* 21 (January-February 1978), pp. 393-414.
10. S. 2784 applied to football, hockey, basketball, and soccer. Baseball was excluded because it enjoys anti-trust immunity as a result of *Flood v. Kuhn*, 407 U.S. 258 (1972). S. 2784 was retroactive and would have forced the Raiders' return to Oakland. Another bill, S. 2821, attempted to define criteria that, if met, would allow a football team to relocate. The Raiders would have been unable to meet the criteria.
11. At the time this is being written legislation similar to S. 2784 has been introduced, as has legislation similar to S. 2821, in the 98th Congress.
12. See the testimony of the mayors of San Francisco, Pittsburgh, Kansas City (Mo.), Green Bay, Oakland, Phoenix, and Baltimore for examples of these arguments and estimates of revenue derived from professional sports in *Professional Sports*, pp. 134-180, 221-231, and 352-368.
13. See Arthur Johnson, "The Uneasy Partnership—Cities and Professional Sports: Public Policy Considerations," a paper delivered at the 1982 North American Society for Sociology of Sport Conference (Toronto, Ontario, November 3-8, 1983), pp. 9-13.
14. John Weinstart and Cym Lowell, *The Law of Sports* (Charlottesville, Va.: Bobbs Merrill Co., 1979), pp. 742-743.
15. See *Organized Baseball*, Report of the Subcommittee on the Study of Monopoly Power, House Report 2002, 82 Cong. 2 sess. (1952). Concern with this issue was voiced again in the late 1950s with baseball's reluctance to expand, in 1965-1966 during the hearings on the AFL-NFL merger, and in the mid 1970s during hearings on the ABA-NBA merger.
16. *Professional Sports*, op. cit., pp. 63-65.
17. James Quirk, "An Economic Analysis of Team Movements in Professional Sports," *Law and Contemporary Problems* 38 (Winter-Spring 1973), p. 50.
18. This was challenged by several witnesses, including Ed Garvey, executive director of the National Football League Players Association. The Players Association stood in opposition to S. 2784 and gave qualified support to S. 2821.
19. *Professional Sports*, op. cit., p. 36.
20. See *Professional Sports*, op. cit., pp. 214 and 31 for the respective statements.
21. Arthur Johnson, "Congress and Professional Sports: 1951-1978," *ANNALS* (September 1979), pp. 114-115.
22. The City of Oakland refused to accept Finley's offer of a buy-out and prevented him from moving his baseball franchise from Oakland.
23. Jesse Markham and Paul Teplitz, *Baseball, Economics and Public Policy* (Lexington, Mass.: Lexington Books, 1982), p. 28.